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THE SENATE OF CANADA

PROCEEDINGS OF

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL (C), AN ACT TO AMEND THE COMPANIES ACT

No. 1

The Hon. F. B. BLACK, Chairman

WITNESS:

Mr. Thomas Mulvey, K.C., Under Secretary of State, Ottawa

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1929

THE SENATE

STANDING COMMITTEE

ON

Banking and Commerce, 1929

THE HON. F. B. BLACK, *Chairman*

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Hon. R. S. White
Hon. W. B. Willoughby, K.C.

ORDER OF REFERENCE

EXTRACT *from the Minutes of Proceedings of The Senate of Canada, 15th February, 1929*

Pursuant to the Order of the Day, the Bill (C), intituled: "An Act to amend the Companies Act," was read the second time, and—

Referred to the Standing Committee on Banking and Commerce.

79936—1½

MINUTES OF EVIDENCE

TUESDAY, 19th February, 1929.

The Standing Committee on Banking and Commerce to whom was referred the Bill (C) intituled "An Act to amend the Companies Act," met this day at 3.50 p.m.

In the absence of the Honourable Mr. Black, Chairman, the Honourable Mr. L'Espérance was elected Acting Chairman.

Honourable Mr. DANDURAND: We have a fairly important Bill to consider. Mr. Mulvey, Under-Secretary of State, is here to answer any inquiries that may be made in regard to the Bill. I would like now to ask Mr. Mulvey to give us a summary of the principal changes in the Bill without going into minute details at this stage.

Mr. THOMAS MULVEY, K.C.: Mr. Chairman and gentlemen, the comments which I have to make will not go into any details of the various sections, but state generally the necessity for them, the departmental practice which renders them necessary, and generally give a rough outline of the sections. I should like to make a preliminary remark referring to our amendments to the Companies Act. The criticism has been made that amendments come in from time to time, and that there should be a general overhauling of the Act so as to leave it definite. The Act as it stands has many crudities in it, and it would be to advantage if a general recasting were made; but that does not clear the difficulty, because business is changing, and has been changing more rapidly during the last twenty years than perhaps at any time in history, therefore it is necessary that the Companies Act should be an instrument to enable the advancement in business to be carried on in the way that corporations desire. It is for that reason that some amendments now suggested are inserted. The first section with which I will deal in section 3, which makes certain limitations upon the classes of companies which may be incorporated under Part I of the Act. This section was first introduced in the year 1869, and has stood as it is with the exception that in 1914, when the Trust Companies Act and Loan Companies Act were incorporated, these classes of companies were also withdrawn from this portion. The section as it stands is indefinite and ambiguous; for instance it says:

> for any of the purposes or objects to which the legislative authority of the Parliament of Canada extends, except the construction and working of railways or of telegraph or telephone lines.

Now it would have been quite clear if we added to that the words, "within the meaning of the Railway Act," because, as it is, we are frequently called upon to authorize companies to construct and operate, say, mining companies, lumber companies, and classes of that kind, and we have been incorporating, for years past, with the restriction that the companies must construct and operate on their own lands. That, however, did not raise any particular difficulty, because it has been the practice now for fifty years to incorporate companies in this way. I will not take them in the order in which they are here, but we are also restricted to the business of a loan company, and it is added, "within the meaning of the Loan Companies Act." That is necessitated by the change in modern business. Not many years ago the business of loan companies was the lending of money on real estate, and the Loan Companies

Act deals with companies of that class of loans. In recent years there is a new class of loan companies which has come into existence, that loan money on sale agreements and on various classes of securities. There are also a number of companies recently which are lending money practically on the character of the person who borrows. It is just a question whether we have authority to incorporate such a company under this part of the Act, and that ambiguity should be removed. There is also a limitation respecting the Insurance Act which it is not necessary to press; but the most important one of all is the limitation to the Act about the trust companies, and we have added the words "within the meaning of the Trust Companies Act." Now there is a new class of companies which have recently come into vogue, and it is advisable that there should be no doubt whatever about our authority under the Act to create them. I have reference to Investment Trusts. These concerns are not really trust companies at all, but there is an ambiguity in the section, and it might be contended in some place or at some time that there was no authority in the Act to incorporate them. This class of company and this business is comparatively new in Canada and also in the United States. It has been in existence for many years in the United Kingdom. I am prepared to describe the nature of their business, the extent of the business, and how it is carried on, if you gentlemen desire me to do so, and I think it would be advisable that I did, because when we come to consider the section which provides for the incorporation of those companies it may be advisable to know the exact class of business which they carry on. Shall I proceed with that?

Hon. Mr. WILLOUGHBY: They are operating now, of course?

Mr. MULVEY: A few, but very few.

Hon. Mr. WILLOUGHBY: Under the Companies Act?

Mr. MULVEY: Under the Companies Act.

Hon. Mr. BÉIQUE: There should be a special Act passed to govern those companies, because they are making a great deal of extension. They have just come into this country, but we will have hundreds of them before five or six years.

Mr. MULVEY: Down to the present time there are not more than ten or twelve of them. However, they are very extensive in the United States, but from communications we have had with the office of the Attorney General of the State of New York I believe that the regulations which we provide are far in advance of anything that is provided in the United States.

If the Committee desires it I should like to read from a report of Leland Rex Robinson, Ph.D., formerly of the Department of Commerce of the United States, who investigated this class of company very extensively in the United Kingdom and has made a report upon the subject. This is from his preface:

> Since the war, and especially during the last two years, there has arisen in the United States a keen interest in investment trusts. In the process of liquidating for pre-war indebtedness to European nations, and especially to Great Britain, America, since 1916, has visualized, as never before, the profound influence exerted upon the development of her industries and natural resources by those British investment trusts through which foreign capital was mobilized for productive employment in the new world. The terrific strain withstood by British natural markets during the war, and the later return of sterling to parity have inevitably directed public attention to these co-operative agencies of domestic, as well as foreign, investment which contributed so materially to London's financial leadership. In view of the recent vast expansion in the ranks of American investors, and the increasing complexity and variety of overseas and home investments offered at the present time, it is not strange

that investment trusts of one kind or another are being so rapidly organized in the United States, and that many of the recently created financing companies having extensive international interests are in more than one way adopting investment trust organization or method.

In the introduction which is prepared by Mr. Paul D. Cravath, a leading lawyer of New York, and counsel for Kuhn, Loeb & Company, and an honourary bencher of Lincoln's Inn, he says:

> The important part played by British investment trusts in making London the financial capital of the world is now generally recognized. The investment trust was admirably adapted to meet the needs of that large class of British investors, especially those of the leisure class, who, in chosing their investments, preferred to follow trained leaders rather than to depend upon their own judgment. In time the judgment of the great leaders in the investment trust field, like Robert Flemming, came to be regarded as almost infallible. There is no magic in the successful investment of capital. It calls for honesty, prudence and intelligence. Given those qualities in reasonable degree, an investment trust cannot fail, while the measure of its success will depend, partly on chance, but chiefly, on the wisdom and foresight of its managers. Before the war the investment trust idea made little progress in America. There were several reasons for this. In the first place, the American people had not developed the investing habit. New issues of securities were placed chiefly with insurance companies and other institutions, and with men of large wealth. As a rule investors of this class felt that they were in a position to form their own opinions regarding their investments. In the second place, the self-reliant American temperament did not lend itself to the development of a disposition among investors to follow financial leaders. The average investor preferred to form his own opinion regarding the enterprises in which he invested, which were usually domestic enterprises, comparatively few foreign investments having been offered in America.

Mr. MULVEY: The book then goes on:

> The development of modern corporate enterprise has so standardized the forms of investment as to permit the concentration of scattered savings for industrial and commercial ends on a scale undreamt of in former centuries. The evolution of the capitalist system, however, has so complicated the problems of investment that a great majority of people are bewildered by the variety of securities offered them, and unable to interpret intelligently the intricacies of the financial statement, the vagaries of the stock exchange, or the changing phases of the credit cycle.

Hon. Mr. DANDURAND: It is suggested that you give those references, and do not read them.

Hon. Mr. TESSIER: Those are the opinions of a writer?

Hon. Mr. DANDURAND: Yes, the comments.

Mr. MULVEY: I have also here a very interesting statement on the recent development of investment trusts, taken from The Economist of January 5, 1929.

Hon. Mr. DANDURAND: You will take care not to make those citations too long, because it will make the report very bulky, and diminish the chance of it being read thoroughly.

Mr. MULVEY: Quite so; I will co-operate with the reporter in respect to that.

The Economist, January 5, 1929.

BRITISH INVESTMENT TRUSTS

One of the most significant features of last year's activity in the new issue market was the number of invitations made to shareholders and the public to subscribe new capital for investment trust companies. Our records reveal that offers coming under this category reached the considerable total of £31,450,000, an amount equal to 8½ per cent of all the money publicly raised during the year, and twice the total of London borrowings of either foreign Governments or British corporations. Another significant fact has been the development of the investment trust company in the United States and Canada, in which English capital has to some extent participated. For example, the London Canadian Investment Corporation was formed last year under the auspices of leading Canadian financiers to provide a channel for British investment, under expert guidance, in Canadian enterprises. The following table shows the investment trust company issues on the London Stock Exchange since 1923:

INVESTMENT TRUST CAPITAL ISSUES

(£'000)

—	1923	1924	1925	1926	1927	1928
Ordinary	3,651	8,294	7,808	14,237	12,142	23,276
Preference	17	20	1,669	771	1,014	2,284
Debentures	962	.....	1,322	302	1,793	5,890
	4,630	8,314	10,799	15,310	14,949	31,450

Two good reasons may be adduced for the popularity of the investment trust in a period of general "liveliness" on the Stock Exchange. On the one hand the mixed experiences of large numbers of non-professional investors at such a time are the best possible advertisement of the advantages of a policy of pooling and spreading investment risks under skilled management; and, on the other hand, the element of public "trustfulness," which is so marked a feature of every boom, helps to obviate the reluctance of many people to give what is, in fact, a blank cheque to the directors of these companies for the investment of their resources.

A new investment trust company must, of course, stand or fall by its board of directors. Good management is everything, and the "connections" of the directors are the guarantee that the new company will get its share of first-class underwriting business. There is much to be said for, as it were, backing the horses out of the well-known "stables"—that is, investing in the companies only of the well-known "groups" in the investment trust company world. From time to time these "groups" will form new companies and give the investor the opportunity of acquiring stock at or near par. For example companies with the following managements are deservedly popular in the market—Robert Fleming, Hon. A. O. Crichton, A. H. Wynn, W. S. Poole; and, among the newer companies, those of E. de Stein, Thomson McLintock, and the "Lake View" group. Among the best known Scottish groups are Shepherd and Wedderburn, Martin Currie and Co., Grahams, Rintoul, Hay, Bell and Co., Wallace and Guthrie, and Moores, Carson and Watson, while the Alliance (Dundee), and British Assets, under Mr. Ivory's management, stand out as

among the most successful of individual companies. There are others about which the investor could be informed by any responsible firm of brokers. Companies coming from such "stables" can, at any rate, be said to possess good connections and management.

Security and earning capacity are very properly the first consideration of trust company directors. Profits made by the sale of appreciated shares are invariably used to strengthen the capital position. Hence depreciation in the market value of securities is only regarded with serious concern if it is held to be due to curtailed earning power rather than to a general depressed tone on the stock exchanges or to market manipulations. The wide distribution of a trust company's capital among different securities -in general practice not more than 1 per cent of the capital being invested in any one security—makes for the elimination of market risks. The strongest companies pride themselves on the spreading of their investments among different industries, types of security, and parts of the world. One peculiar feature of trust company investments is the cross-holding between trust and trust. In 1928 out of a nominal investment holding of 25 companies of all sizes, which totalled £43·8 millions, £2·8 millions, or 5·2 per cent, represented nominal holding of shares and stock of other investment trusts.

It is interesting to compare the respective capital and revenue positions of some of the trusts connected with the groups we have mentioned. The following figures are taken from 1928 reports:

CAPITAL POSITION

Company	Year formed	Group	Total Paid-up Capital and Debentures	Including Ordinary Stock	Reserves and Carry Forward	Gross Revenue less Income Tax
			£	£	£	£
American Invest. and General	1879	Crichton	3,000,000	750,000	479,532	172,843
Anglo-Celtic	1925	E. de Stein	1,500,000	400,000	33,032	78,309
British Assets	1898	Ivory	4,091,155	350,000	913,874	232,966
British Investment	1889	Fleming	4,500,000	900,000	1,607,587	340,890
Edinburgh Investment	1889	Wallace and Guthrie	1,390,000	540,000	247,364	101,503
Grange	1926	T. McLintock	500,000	250,000	14,203	33,260
Industrial and General	1889	Poole	6,000,000	1,750,000	1,470,747	498,409
Mercantile Invest. and General	1884	Wynn	6,000,000	1,500,000	686,319	408,565
Scottish United Investors	1924	Moores, Carson	2,000,000	400,000	22,489	117,531
Stockholders Investment	1925	Lake View	1,198,992	240,000	85,320	54,147

EARNING POSITION

Company	*Expenses	Per cent on Capital	Net Revenue Available for Ordinary Stock	Per cent Earned, Gross	Per cent Paid, Gross	Yield on Dividends	Yield on Earnings
						At latest Prices	
	£		£			£ s. d.	£ s. d.
American Invest. and General	8,866	·30	84,555	14·1	12	4 16 5	5 13 3
Anglo-Celtic	6,601	·44	33,537	8·4	6	3 18 2	5 9 10
British Assets	17,632	·43	86,239	30·8	20	2 5 11	3 10 0
British Investment	16,569	·37	193,708	26·9	21	4 7 10	5 12 6
Edinburg Investment	4,975	·36	67,528	15·2	12	4 1 1	5 1 8
Grange Trust	3,032	·61	12,534	6·3	5½	3 18 10	4 10 0
Industrial and General	42,787	·71	315,863	22·4	17	4 8 7	5 16 8
Mercantile Invest. and General	15,541	·26	234,024	19·5(	15	4 8 10	5 15 5
Scottish United Investors	9,103	·46	35,979	11·2	7	3 2 3	4 19 7
Stockholders Investment	5,165	·43	15,536	8·2	7	4 16 9	5 5 9

*Including rents, salaries, fees of directors, auditors and trustees, etc.

It must be realized that the "visible reserves" shown here are no measure of a trust company's financial strength. "Hidden reserves" created by writing down the cost of investments out of capital profits are often very considerable. For instance, British Assets reported that a valuation of the assets showed a large surplus over the capital, reserve funds and carry-forward, which had been increased in the last full year by £6,000,000. This trust has also made the distribution of capital bonuses a feature of its policy, a fact which goes to explain the relatively low yield on its stock. The tables set out the case for a purchase of investment trust securities, since with a continuance of progress dividends should eventually rise to the level of current earnings. The fact that the mere size of the company has no necessary connection with managing expenses is borne out by these figures, which show that the two largest companies had respectively the highest and lowest proportionate expenses.

It is instructive to compare the above companies with the so-called Co-operative Investment Trusts, which have been much criticised for paying high dividends too early in their career, a policy which precludes the building up of large reserves. In its last report, for instance, the largest of them, the First-Co-operative, noted a depreciation of its investments below book value of £34,210, which must be set against total reserves amounting to £65,214 on a paid-up capital of £1,408,720. It will be seen from the following table that the "co-operative" arrangement, whereby the remuneration of the directors is maintained at a fixed percentage of the distributed profits, does not on the whole reduce the cost of management. The six directors, who are the same for all three companies, received between them £14,254 in the course of the year, while £14,436 for other expenses raised the expense ratio to over 1.2 per cent of the average paid-up capital.

FIRST, SECOND AND THIRD CO-OPERATIVE INVESTMENT TRUSTS

	Paid-up Capital.	Management Expenses	Directors' Remuneration	Total Expenses as Percentage of Capital	Dividends on Ordinary Shares % p.a.	Investment Reserves	Other Reserves and Carry Forward
	£	£	£				
First Co-operative—							
To Jan. 31, 1928	1,262,845	3,184	4,303	·59	7	35,000	34,008
To July 31, 1928	1,408,720	4,682	4,569	·67	7	35,000	40,214
Second Co-operative—							
To March 31, 1928	907,111	2,190	1,623	·42	7	.....	21,063
To Sept. 30, 1928	990,679	3,675	3,280	·80	7	.....	25,136
Third Co-operative—							
To April 30, 1928	84,125	397	152	·65	7	.....	2,865
To Oct. 31, 1928	106,925	308	327	·59	7	.....	4,409

We cannot do more than note in passing that the rapid initial success of these Co-operative Trusts stimulated the efforts of many imitators, and a number of new Trusts have been started on similar lines, and with a similar appeal to the small investor, who would be wise to realize that in the vital respect of the capabilities of the management the merits of these new concerns vary immensely.

Investment trusts are perhaps the most important achievements of insurance against strictly commercial and financial risks. Economic theorists have been wont to regard such risks as uninsurable, in contrast to the more fortuitous and personal risks of accident, fire, ship-wreck and the rest. But this proposition forgets two things: that risk as an economic magnitude has no meaning out of relation to the person bearing it, and that all practicable insurance takes the form either of division of a big risk or of the merging of a number of small risks. The chances of fire are no less because an insurance company bears the loss; the chance of depreciation in a block of shares is no

less because they are held by a trust company. But even if they result in a net loss, the fluctuations in a mass of shares cause much less misfortune if they are held in common by a large number of persons than if held by the same persons individually in separate blocks, and, of course, a good trust sees to it that such losses do not occur. Hence the managing expenses of the conservative investment trusts must be regarded as a very cheap kind of insurance premium against loss.

Mr. MULVEY: I have also a statement which I will place in the hands of every member of the Committee a scheme under which these investment trusts are incorporated. They are limited; they are not allowed to invest in securities as they will. Here is one; it is in fact the first investment trust that was incorporated.

FOUNDERS INVESTMENT TRUST LIMITED

(Issued 4th February, 1927)

1. The Company shall within six (6) months after its resources aggregate One Million ($1,000,000) Dollars and thereafter, own at all times at least One Hundred (100) different marketable securities;

2. The Company shall, within six (6) months after its resources aggregate Two Million ($2,000,000) Dollars and thereafter, own at all times at least Two Hundred (200) different marketable securities;

3. The Company shall, within six (6) months after its resources aggregate Three Million, Five Hundred Thousand ($3,500,000) Dollars and thereafter, own at all times at least Three Hundred (300) different marketable securities;

4. The Company shall, within six (6) months after its resources aggregate Five Million ($5,000,000) Dollars and thereafter, own at all times at least Four Hundred (400) different marketable securities;

5. Not more than Fifty (50%) Per Cent. of the total resources of the Company shall be invested in securities originating in the United States of America;

6. Not more than Thirty-Five (35%) Per Cent. of the total resources of the Company may be invested in securities originating in any other country other than the Dominion of Canada and the United States of America;

7. Not more than Three (3%) Per Cent. of the total resources of the Company may be invested in any one security except Government, Provincial, State or Municipal obligations or securities of Investment Trust organizations.

8. Information concerning the history, assets and earning record for a period of at least three (3) years shall be obtained concerning each issuer before authorization of purchase; Except that the maximum of not more than Twenty (20%) Per Cent. of the resources of the Company may be invested in securities of more recently organized companies, corporations, associations or trusts;

9. Not more than Twenty-Five (25%) Per Cent. of the resources of the Company may be invested in securities of any one of the following classes:—

1. Banking Institutions,
2. Insurance Companies,
3. Investment Organizations,
4. Railroad Companies, and
5. Public Utility Companies.

10. Not more than Twelve and One-Half (12½%) Per Cent. of the resources of the Company may be invested in security of any other distinct class of business or industry;

11. At least Eighty (80%) Per Cent. of the investments of the Company in securities issued by Railroad, Public Utility and Industrial Companies shall at the time of purchase have the following book value as compared with purchase price:—

(*a*) Bonds One Hundred and Fifty (150%) Per Cent. or more,

(*b*) Preference Shares One Hundred and Twenty-Five (125%) Per Cent. or more,

(*c*) Common Shares One Hundred (100%) Per Cent. or more.

12. Securities owned when ascertained to be no longer eligible shall be sold within one year from such date;

13. The Company may underwrite issues of securities eligible for purchase to an amount not exceeding in any case twice the amount of such securities which could be purchased for investment, but in no case to an amount in excess of Six (6%) Per Cent. of the total resources of the Company. The total liabilities incurred in underwriting shall not at any time exceed Twenty (20%) Per Cent. of the resources of the Company.

14. Notwithstanding anything hereinbefore contained the Company may invest the whole or any part of its resources in any Investment Trust Organization having the same or more stringent restrictions upon its power to invest its resources as has this Company.

UPPER CANADA INVESTMENT TRUST LIMITED

(Issued 29th November, 1928)

And it is further ordained and declared that:

1. The funds of the company shall be invested so far as possible in such manner as to provide unusual distribution of risk combined with opportunity for appreciation of capital by means of broad diversification in seasonal and marketable securities to be selected by experts after careful and studied analysis of economic and business conditions;

2. All securities shall be fully paid for and purchased outright;

3. The resources of the company shall not be employed in any country which in the opinion of the directors has not stable government;

4. All purchases of Corporation securities shall be based on examination of surplus and undivided profits, earnings, past records, field of operation, potentialities and book value;

5. The company shall at all times keep fifty (50%) per cent of its entire resources invested in such investments as are authorized for the investment of the funds of a Life Insurance Company under the Insurance Act of Canada, 1917, as amended 1926;

6. The amount which may be invested in any one security with the exception of securities of or guaranteed by the British Government or any Dominion, Colonial or Provincial Government within the British Empire, or the United States Government shall be limited to ten (10%) per cent of the outstanding share, bond, and debenture capital of the company; provided that the funds of the company may from time to time be loaned on call or short term loans on bonds, debentures, stocks or other immediately saleable securities of a sufficient realizable value to cover, either when the company has surplus funds uninvested or when it is deemed inexpedient to invest such funds in long term securities;

7. Not more than fifty (50%) per cent of the resources of the company shall be invested in securities of any one general class of business or industry and not more than ten (10%) per cent in securities of any specific business or industry;

8. No investment in any class of stock of any issue shall exceed ten (10%) per cent of the total of such class;

9. Securities owned and ascertained to be no longer eligible under the provisions hereof, shall be sold within one (1) year from such date;

10. At least seventy-five (75%) per cent of the investments of the company in securities issued by railroads, public utilities and industrial companies shall at the time of purchase have the following book value as compared with the purchase price: (*a*) Bonds—150 per cent or more; (*b*) Preferred Shares—125 per cent or more;

11. The company may underwrite issues of securities eligible for purchase to an amount not exceeding in any case twice the amount of such securities which may be purchased for investment, but in no case to an amount exceeding ten (10%) per cent of its total, and the total liabilities incurred in underwriting commitments shall not at any one time exceed twenty-five (25%) per cent of the total resources of the company;

12. The company shall not purchase partly paid shares involving a call extending over a period of more than two (2) years after the date of purchase except in the case of shares of insurance companies, and shall only purchase partly paid shares of insurance companies that have been in business five (5) years or more, where the capital is unimpaired in accordance with the latest information from the Department of Insurance of Canada with respect to companies incorporated or operating under the supervision of the Insurance Department of Canada, or from the best obtainable information with respect to insurance companies incorporated elsewhere;

13. The company shall not purchase or hold a controlling or a managerial interest in any other company or lend its funds to any person owning or controlling a majority of the stock of such company;

14. Subject to the foregoing the company shall never act as guarantor or engage in any promotion or financing and its business shall be confined to the investment and re-investment of its funds.

ECONOMIC INVESTMENT TRUST LIMITED

(Issued 28th January,1927)

AND IT IS FURTHER ordained and declared that:—

1. The Company shall at all times keep fifty (50%) per cent of its entire resources invested in such investments as are authorized for the investment of the funds of a Life Insurance Company under the Insurance Act of Canada 1917, as amended 1924, and in bonds, stock or other obligations of Foreign Governments.

2. Not more than five (5%) per cent of the subscribed capital of the Company for the time being (including as well borrowed capital as share capital) shall be invested in or loaned upon any one security or investment (other than British and/or Dominion of Canada Government stocks and bonds) but securities or investments of different titles or denominations shall not be deemed to be one security or investment by reason only of their possessing or being entitled to a guarantee from or by the same State, Government, Municipality, Corporation or other body.

3. The Company shall not make any investments in, and or loan upon the security of more than ten (10%) per cent of the total amount of the capital stock and/or bonds and/or obligations of any one Company, Corporation, and or Government, and/or public authority, except stocks, bonds, and/or obligations of the Dominion of Canada and/or Great Britain, but securities or investments or different titles or denominations shall not be deemed to be one security or investment by reason only of their possessing or being entitled to a guarantee from or by the same State, Government, Municipality, Corporation or other body.

4. Not more than twenty-five (25%) per cent of the resources of the company may be invested in securities of any one of the following classes: (*a*) Banks, (*b*) Insurance Companies, (*c*) Investment Companies, (*d*) Public Utility Companies, and not more than twelve and a half (12½%) per cent of the resources of the Company may be invested in the securities of any other distinct class of business or industry.

5. Securities owned and ascertained to be no longer eligible under the provisions hereof, shall be sold within one year from the date of their becoming ineligible but the restrictions upon investments and lands by the Company herein contained shall not apply with regard to investments or lands which at the time of making the same were within the limits prescribed as aforesaid but by reason of amalgamation, consolidation, reduction of capital or otherwise shall have subsequently exceeded the said prescribed limits.

6. The Company may underwrite issues of securities eligible for purchase to an amount not exceeding in any case twice the amount of such securities which may be purchased for investment, but in no case to an amount exceeding ten (10%) per cent of its total resources, and the total liabilities incurred in underwriting commitments shall not at any time exceed twenty-five (25%) per cent of the total resources of the company.

Hon. SMEATON WHITE: Would this last printed statement have any reference to this particular Bill?

Hon. Mr. BÉIQUE: The Bill deals with these companies.

Hon. Mr. BELCOURT: My impression is that every gentleman around this table has a general idea of the difference between an investment company and a trust company, and it is not necessary that we should go into an elaborate study of each one respectively. What I think would be very desirable, speaking for myself, would be that Mr. Mulvey should tell us in what respect he proposes to amend the Companies Act so as to meet the different cases—his own idea, his own experience, not that of Mr. Cravath or anybody else.

Hon. Mr. LAIRD: We know what these investment trusts are. I would like Mr. Mulvey to deal with the restrictions that are introduced into the charters of the investment trusts.

Mr. MULVEY: There are no two companies that desire to be restricted in the same way, and it would be impossible to lay down general restrictions to which every company should conform; but there are main principles which must be observed, and one is that 50 per cent of the total capital of those companies should be invested in securities approved of under the Insurance Act.

Hon. Mr. TESSIER: That is good; that is all right.

Mr. MULVEY: That is the main provision; there are other provisions. That is all I have to say about investment trusts.

There are a number of sections of the Act which merely make verbal alteration, to which I shall not refer. Sections 4 and 5 are of that class. Section 6, however, is somewhat more extensive. The modern method calls for incorporation of companies with shares having no par value. That was first intro-

duced in the legislation of 1917, which copied the New York legislation of 1912. Since that time there have been tremendous changes in the development of companies that are issuing shares of this class. Originally there was no provision that the preferred shares could be issued without par value. The purpose of this Act is merely to allow that. They may have them with or without par value so far as preferred shares are concerned, and of course the common shares are usually without par value. This is merely to allow of growing conditions which are practically demanded by the public.

Sections 7 and 8 are merely verbal alterations to make those sections of the Act workable. They provide that a company incorporated by a special Act of Parliament, or by letters patent under some form or Act which does not bring the company within this Act, may obtain letters patent under this Act. It has happened in many cases that where a company is incorporated by a private Bill it could not be brought under this Act because it perhaps was authorized to take money on deposit. This enables a company to abandon things that do not come within this section of the Act and thereby conform with the principles of this Act.

Section 9 is merely for the purpose of repealing three sections with which we have had a great deal of trouble. They purport to enable companies to be reincorporated by this Act. This is found, in practice, to be quite illusory, and in order to relieve the Department of showing in each case that this is so, it is advisable to have the sections eliminated.

Section 10 merely makes a verbal change. In considering a name that has been given to the company the Secretary of State may, if he finds the name conflicts with that of another company, or has any other ground of objection, make changes and gives a new name. In section 23 it provides for a change of name, but he appears to be restricted, and the only change of name is made when it conflicts with another. It frequently happens that trade marks and trade names should form a good reason why the Secretary of State should have authority to change the name on other grounds, in the same way as it was granted in the first place.

Mr. MULVEY: Section 11 is merely a verbal change; also section 12. This is a lengthy section, and it merely includes a number of objects which are practically provided for in every case, and this section obviates the necessity of copying it five times.

Section 14 is only a verbal change.

Section 15 is to cover departmental necessity. It very frequently happens that a prospectus is dated and mailed from British Columbia. It takes effect only from the date of filing, and this section enables the department to accept it if evidence is given that no shares have been offered to the public in the meantime.

Hon. Mr. DANDURAND: You passed rapidly from section 12. Will you explain the changes on page 7 of the Bill?

Mr. MULVEY: They are merely the addition of other clauses which we find applied for time after time, and by inserting them here we obviate the necessity of copying them five times in the department. They are in addition to those which have been in the Act since 1924.

Hon. Mr. BELCOURT: Powers which are applicable to all companies?

Mr. MULVEY: Yes, quite so.

Hon. Mr. BELCOURT: You are wanting to make them statutory powers?

Mr. MULVEY: Yes, quite so. Then section 16 is also inserted for the purpose of enabling companies to overcome difficulties created for them by mistakes or misapprehensions in preparing of prospectuses. Of course the prospectus is the basis on which the issue of shares takes place, and if there is something

wrong in the prospectus there is always a question whether the shares have been properly issued. If something has gone on and it is clearly an omission, and causes nobody any harm, this enables the company to go before the judge and have the prospectus rectified.

Hon. Mr. BELCOURT: Have you a provision there that requires registration of a prospectus in all companies, whether issued by the company or by the promotor?

Mr. MULVEY: That is a point I am coming to in a minute. The next section, 50-B, practically provides for that point you raised, Senator Belcourt. There has been a growing practice in companies, of alloting their shares to underwriters, and not filing a prospectus at all; the underwriters then selling the shares to the public as their own. The company then merely files a notice in lieu of prospectus, which may not give all the information which the investors should have. This subject has been under discussion in England for the past two or three years, being investigated by a Committee of experts, a departmental Committee to which was associated a number of leading lawyers and financiers.

Hon. Mr. BELCOURT: What section deals with that?

Mr. MULVEY: Section 50-B, page 9 of the Bill. This section provides that where a company allots its shares to an underwriter who offers them to the public, under certain circumstances the company must itself file a prospectus, nevertheless. Under ordinary circumstances it files only a notice in lieu of prospectus, and this section calls upon them to file a prospectus. The circumstances are several; the principal one which it is intended to meet is where this method of the company offering its shares to the public is adopted for the purpose of evading the provisions of the Act in regard to the prospectus. I may say that this section is not acceptable to a considerable section of the financial public, and it will be opposed. Already several have suggested that they desire to appear before you to object to this section. The ground upon which they object, so far as I can learn, is this, that the financial methods followed in England are quite different from the methods which are followed here, and that while this amendment may be suitable for the situation in England it would create difficulties here, and practically stop business in many respects. That is a matter which I have no doubt will be thoroughly explained to you by the gentlemen who take this position. So far as the department is concerned, the attitude is this: we have been pressed from time to time to approve or suggest what is called Blue-sky Law. I have studied that subject for some years past, and in my opinion Blue-sky Law is useless. It does not accomplish what it is intended to effect. It has been disastrous in many places. It is not based on good principles. I could give you very many reasons why, so far as I am personally concerned, I have always opposed it. The methods which have been adopted in the Province of Ontario, and I believe in the Province of Manitoba, are the methods which will give results, but notwithstanding this, pressure has been brought to bear on the department to approve of Blue-sky Law. Now, in that situation, when we find that legislation which is enacted for that purpose in England is following the line of legislation which we have had here for the past twelve years, I think that I should bring it before you for consideration, at any rate, and it will be for yourselves to say whether in the present circumstances it is proper legislation here.

Hon. Mr. DANDURAND: So you will have to justify this modification?

Mr. MULVEY: Well, I would rather put it the other way. My justification is this: the prospectus clauses here follow those which have developed in England since 1900—for the years 1900, 1902, 1908—and this is considered to

be an improvement on those methods. Now I say, if they think so—and we have followed their methods heretofore—that we would be justified in following the methods which they are adopting now. That is my justification.

Hon. Mr. DANDURAND: For the protection of the public?

Hon. Mr. TESSIER: For the protection of the investor; that is important.

Mr. MULVEY: Those who oppose that say that it is going to obstruct business, and that it is unnecessary. That is how they justify their opposition to it.

Hon. Mr. CASGRAIN: You say you want them to issue a new prospectus?

Mr. MULVEY: A prospectus; not a new one. Under the circumstances they do not issue a prospectus at all, because they sell all their shares.

Hon. Mr. CASGRAIN: How can they issue one prospectus when there has been one out before?

Mr. MULVEY: They issue a notice in lieu of a prospectus now, and the allotment to the underwriters is merely to avoid the prospectus; then they must provide one.

Hon. Mr. CASGRAIN: But only one?

Mr. MULVEY: Yes, to be sure.

Hon. Mr. BELCOURT: Do you leave the obligation to file a prospectus on both the company and the promoter, or is it the company alone?

Mr. MULVEY: At present I would rather not answer that question, because I not only want to study this a little more carefully, but I want to study the report of the English Committee on which this is based. When we get into detail I hope to be able to answer that question.

As to section 17, I have nothing to add to what I have already said respecting the prospectus clauses of the English Act. This merely adopts the changes that have been made there, which necessitate further information being given than was required before. I have no doubt the same objection will be raised to this section as to the former.

Section 18 is merely showing how the prospectus or statement is to be filed.

Section 19 is merely for departmental purposes.

Section 20 contains four clauses which are of importance. It has been a growing practice with companies to issue shares which confer no right to vote.

Hon. Mr. CASGRAIN: That is wrong.

Mr. MULVEY: Now, investors frequently take shares of this character without knowing where they stand, and this merely provides that if any class of shares has no right to vote at a meeting of shareholders, that shall be disclosed on the certificate.

Hon. Mr. CASGRAIN: Do you believe it is right that shareholders should not have any right to vote?

Mr. MULVEY: It is a matter of business.

Hon. Mr. CASGRAIN: Why? People who put their money in should have the right to vote.

Mr. MULVEY: If they put their money in, knowing that they have no right to vote, it is for them to say. I would not undertake to pass an opinion upon that; but as a matter of fact there are very many companies in which that is done.

Hon. Mr. DANDURAND: All you say is that when a shareholder has no right to vote he should know it.

Mr. MULVEY: That is it.

The Acting Chairman: Do you suggest that you give a special name to those shares?

Mr. Mulvey: They are usually preferred shares. There is another reason for this. Some years ago the usual method of financing was by the issue of common shares and debentures. In many cases that was very disastrous. Perhaps at the outset the company had difficulty in earning enough money to pay interest on their debentures, but that is an obligation which they had to meet. Instead of doing that, they issued preferred shares, on which dividends are not required to be paid until they are earned, and those shares are usually made redeemable. Those are the classes of shares which usually have no right to vote, because they replace the debentures, which were the former kind of issue. These next four sections are for the purpose of controlling the redemption of preferred shares. That is the usual, and what I might call the up-to-date, method of financing. The structure of the Act really provides that the capital situation should be always shown on the records of the Department. Those are the only proper public records that there are. The by-laws of the company are not public, under the system of organization of the companies. Now, where shares are being redeemed from time to time we must have on the files of the Department something to show to what extent they have been redeemed. Formerly we required them to apply for supplementary letters patent every time they were redeemed, but that was found in many places to be unreasonable, as it subjected the company to a great deal of expense and trouble. This clause as it stands now is merely for the purpose of making it more simple, so that when preferred shares are redeemed the companies shall simply file a statement with the Department showing the class of shares and the extent of the shares that have been redeemed.

Hon. Mr. Belcourt: I see you provide, in section 56-C that there shall be no redemption except out of profits.

Mr. Mulvey: I should say again that that section is copied verbatim from the English Act. I believe it should be amended when it comes before the Committee.

Hon. Mr. Belcourt: It is a pretty drastic provision.

Mr. Mulvey: It is clearly limited to the extent you say, except that I think there is provision that they may be redeemed from further issue. I believe that it should be put in this way, that they may be redeemed from profits if so required by the letters patent. They may be redeemed by the issue of debentures, because frequently a company at the outset is not aware whether it will make sufficient profit to pay its dividends, and it adopts the preferred shares as its principal issue. Later on, when it finds that it is making a profit, then it can issue debentures, and redeem its preferred shares, and the section should go to that extent.

Hon. Mr. Belcourt: The section definitely states that the shares are not to be redeemed except out of profits.

Hon. Mr. Dandurand: But there is a further clause.

Mr. Mulvey: Even if it is as you say, Senator Belcourt, my attention has been drawn to that difficulty since the drafting of the Bill, and I propose making an amendment as it goes through the Committee.

Hon. Mr. Belcourt: All right; I am satisfied.

Mr. Mulvey: Section 56-A appears to me to be a reasonable one. It is also copied in full from the English Act. It has been found very necessary there, and I believe it is here. Loan companies and many other concerns purchase other companies' assets, and this requires some regulation.

Section 21 is merely a verbal change.

Sections 22, 23 and 24 relate to mortgages, and those merely continue the improvements that were made in the English Act. The Bill introduces two additions—a mortgage on calls which have not been paid—top of page 18 of the Bill—and a mortgage or charge upon the good-will. The object here is to provide a method of registering mortgages where they are not required to be registered under provincial law. That is the main purpose, and this section has been working quite satisfactorily since the year 1917 when it was introduced.

In regard to section 26, two changes are necessary. The first one is merely to correct what I think was a mistake in the Act as it stands. If a person was named as a director in the prospectus and he had not taken shares, or had not consented to act as a director, he was forever prohibited from being a director. That appears to be unreasonable, and this change is merely for the purpose of curing that situation.

Hon. Mr. DANDURAND: As to executors of estates?

Mr. MULVEY: It is the first change that is more important. I was referring to the second one.

Hon. Mr. BELCOURT: What section is that?

Mr. MULVEY: Section 26. It has always been provided by this Act that only a shareholder in his own right may be elected a director. When the Act was originally passed that may have been a very good provision, because our finances at that time were very limited; but at the present time it creates a good deal of inconvenience. As I stated in the notes here, suppose a person who controls a company dies and his estate is being administered by a trust company. The shares are transferred to a trust company. They are not owners in their own right; they cannot be a director or an elected director. There may be some companies that desire to continue the old method, requiring every director to be a shareholder in his own right. This merely provides that they may choose to continue having directors shareholders in their own right, or that they may not do so. It is not necessary to be an actual shareholder to be a director. As a matter of fact, in a great many concerns, particularly in the United States, the directors may not be shareholders at all; they may be employed as any other employees, to look after the management of the company.

Section 27 provides for an Executive Committee. Modern methods make this almost imperative in large concerns that require a board of directors to represent various interests but it is often difficult to get directors together sufficiently often to carry on the minor affairs of the company. This merely provides that an executive committee may be appointed to supervise continuously the business of the company.

Hon. Mr. BELCOURT: Is not there a provision now under the Companies Act?

Mr. MULVEY: No.

Hon. Mr. BELCOURT: Do you mean that an executive committee cannot be appointed?

Mr. MULVEY: No, not under the Companies Act as it is to-day.

The DEPUTY CHAIRMAN: It has been done.

Mr. MULVEY: I know that it has been done, but there is no legislative authority for it.

Hon. Mr. BEIQUE: The committee reports its proceedings to the board, and they are ratified.

Hon. Mr. DANDURAND: The executives must have their decision confirmed by the board.

Mr. MULVEY: Yes.

Hon. Mr. BELCOURT: We are told by Mr. Mulvey that their appointment is illegal.

Hon. Mr. TESSIER: They would have to make the by-laws in conformity with the Act.

Hon. Mr. BELCOURT: This will not have a retroactive effect, will it?

Mr. MULVEY: I do not see how it could.

Hon. Mr. BELCOURT: I am trying to see how it could not, because the law is there. In future, executive committees will be legal, but it will make illegal all executive committees previously appointed.

Mr. MULVEY: Not any more illegal than they were. You know the principle of law, delegatus non potest delegare,—a person to whom a trust is delegated cannot in turn delegate that trust.

Hon. Mr. BELCOURT: I am not prepared to accept that doctrine in this case.

Mr. MULVEY: I do not think there is any question about that.

Mr. BELCOURT: I am not prepared to accept that.

Mr. MULVEY: Section 28 is copied from the English Act, and requires very little comment. It merely provides that companies holding shares in another may be adequately represented at meetings of the shareholders. It is quite innocuous.

Section 29 merely authorizes the establishment of branch registers under the supervision of the Secretary of State. In its present form the section is tentative. There have been a number of suggestions made regarding this section, and they will be placed, I am sure, before you in the discussion on the Bill. The section is drawn in this way merely to enable the discussion to go on. While it is quite sufficient for departmental purposes, it is very likely this section will come out of this Committee very different from the way it reads at the present time.

Hon. Mr. BELCOURT: It is practically the same as the provision in the Banking Act, is it not, with regard to bank shares?

Mr. MULVEY: No, it is quite different. The provision in the Banking Act has been suggested here, but I think it goes farther than is necessary. I believe there will be considerable discussion on that section later on.

Section 30 merely provides for the keeping of books of accounts. It is a curious thing that the Act has stood for so many years without this requirement. This section is also copied verbatim from the English Act.

Section 31 provides for the investigation of investment trust companies. This is rather a hazardous thing to do. I know that at least one prominent lawyer said, "If you investigate investment trust companies, why do you not investigate all companies?" That seems to be a pertinent objection, but I do not agree with it. The kind of investigation proposed is merely one to ascertain whether the company has complied with the limitations of its Charter. If it has, that ends the investigation. But if the company has gone beyond the limitations of its charter, there should be some authority to go further, and the section is drawn in that way to accomplish that purpose.

Hon. Mr. BELCOURT: Have you considered the advisability of changing the term "investment trust", by taking out the word "trust" and calling it merely an investment company, or by taking out the word "investment" and calling it a trust company?

Mr. MULVEY: We thrashed that out when the first application came in to the Department. The term "investment trust" is well known in Great Britain. I know that the mere having of the words "investment trust" in the name of the concern that is known as the Founders Investment Trust Limited

enabled them to get £50,000 in Great Britain, because those words indicated a class of business that is carried on and which has made a large appeal to the British investors. That is why I think the words should be continued.

Hon. Mr. BELCOURT: They do not mean the same thing. They are not synonymous terms; they are, in fact, contradictory.

Mr. MULVEY: It does not make any difference what they may mean; it is what people take them to mean.

Hon. Mr. BELCOURT: If you would use the proper words, they would be better.

Mr. MULVEY: No. It is a curious thing about the English language, that words often fail to indicate anything of what they really mean. You will find that time and time again. I will give you one instance that comes to my mind, namely, the great English public school which is not a public school in any sense of the word. But the Englishman takes a certain word and he always gives it the same meaning. Now, neither in Canada nor in the United States do we do that, but in England they do. I have noticed that they may take a word which to you or to me means something entirely different from what it means to them, but they always use it in the same way. It is really because they are called investment trusts that they are able to get British money.

Hon. Mr. BELCOURT: I am not worrying so much about the facilities for enabling them to get the funds of investors as I am about the necessity for protecting the public.

Mr. MULVEY: This is a new kind of business, which if properly managed will be of great advantage to the Canadian investing public. If we can get English money here as well, it will be to our advantage, because we need as much as we can get.

Hon. Mr. WILLOUGHBY: I suppose these investment trusts put a very large percentage of their funds, 30, 40 or 50 per cent, in public securities.

Mr. MULVEY: Yes. That is why it appeals to the investors, and that is why they carry on their business.

Hon. Mr. LAIRD: I notice you take power to call for details of investments. Does that imply that you propose to exercise any supervision over them?

Mr. MULVEY: No. That means that when the Secretary of State thinks it advisable he can send somebody in to the company to find out whether the provisions of its charter are being complied with. If the investigator finds that they are not doing so, he may want to go further. It is so long ago since I read this section, that I had better look at it again. I now notice two provisions there which escaped me for the moment. The Secretary of State may ask for statements merely for the purpose of seeing whether the company is complying with its charter; and it may be that when those statements are filed, or if there is something suspicious about them, he may want to go further and have an investigation of the security register of the company itself, or to find out whether the securities that are shown on the register are actually on hand. If there is an indication of something wrong, then he may want to investigate the whole business.

Hon. Mr. LAIRD: Right at this point I would like to ask the leader of the Government—I do not know whether he is prepared to answer or not—whether it is contemplated to introduce legislation with a view to controlling the investments of these investment trust companies along the lines that investments of insurance companies, bank and loan companies are approved. I think that is a question which naturally arises in consideration of this clause.

Hon. Mr. DANDURAND: I have been handed this Bill with the idea of submitting it to the Senate, and, through the Senate, to the public, in order to

invite criticism. In answer to my honourable friend I may say that we have an Inspection Act for loan companies; we have a very stringent superintendence and inspection of insurance companies, and of trust companies also. I wonder if we are going beyond the principles already laid down in those various Acts by enacting this special legislation.

Hon. Mr. LAIRD: I do not want to argue the question, but it strikes me that at this point, when this clause is being considered, it might not be a bad idea for the Government to consider the question of what they are going to do with these investment trust companies, because they are getting to be on a very large scale, and a number of them have started to operate. It is a question whether some special act should not be passed regulating the nature of the securities in which they shall invest the moneys they get from the public, and calling for the same inspection to which insurance companies are subject. In considering that, the question would arise whether the matter should come under the Department of Finance, which already has an inspection system with a very high priced man in charge of it, or under the Secretary of State, who is administering this portion of the Act and who is entitled, under this clause, to call for details regarding the manner in which the companies are carrying on their business.

Hon. Mr. BÉIQUE: I propose to suggest that the honourable leader of the Government have somebody prepare a draft of an act governing investment trust companies. I quite agree with the statements that have been made.

Hon. Mr. BELCOURT: A special act?

Hon. Mr. BÉIQUE: Yes. Within two or three years we will have hundreds of these companies. They have developed rapidly in England and in the United States, and within the last twelve months, to my knowledge, a couple of dozen or more of these companies have been formed. They will be very useful companies, especially with the inclination of the public to speculate just now. These companies will be a great help to investors, because the boards will be composed of men of experience who will be able to decide, better than individuals are, how their savings should be invested.

Hon. Mr. WILLOUGHBY: Better than a broker's tip, you think?

Hon. Mr. BÉIQUE: Yes. As has been suggested, the Government, through the Department of Finance, already has complete machinery to regulate and to supervise loan companies, trust companies and insurance companies. These investment trust companies are of the same nature, and they should be governed in a similar way. I think if the honourable leader of the Government will instruct someone to prepare a form of bill, we could take it up after the adjournment, when we start on this matter and decide whether we should not strike out all reference to investment trust companies in this Bill and pass a general act that would govern these companies.

The ACTING CHAIRMAN: That is a first-class suggestion.

Mr. MULVEY: Section 32 provides for a slight amendment in a section which has been standing since 1924. It provides that where an arrangement or compromise is made between the shareholders or debenture holders of a company, they may apply to a judge for an appointment for a meeting of each class. Then the compromise arrangement is submitted, and if it is approved of by three-fourths of those of each class, it may be approved of by a judge. Now, we find that judges have been approving of arrangements which are not according to the provisions of the Act, and it is necessary that the Secretary of State should have some control. The control here suggested is that if the Secretary of State finds that the arrangement is not within the provisions of the Act, he shall send it back to the company.

Hon. Mr. DANDURAND: With a view to a compliance with the provisions of the Act?

Mr. MULVEY: Yes, exactly. It has also been suggested that before the arrangement has been approved of by the judge, it should be submitted to the Department, and that a certificate from the Department that it is in accordance with the provisions of the Act should be before the judge before he approves. It is immaterial from a departmental standpoint which method is adopted, but there should be some provision by which the Secretary of State would be protected. There was one company to which the Secretary of State was obliged to issue, because the Act said so, although the arrangement was not in compliance with the Act.

Hon. Mr. WILLOUGHBY: Did you treat that as ultra vires?

Mr. MULVEY: If that company gets into trouble, we may find out. I do not see how it can be found out otherwise.

Section 33 is adopted from the English Act. It defines the word "arrangement." Apparently some doubt has been raised regarding it in English litigation.

Section 34 is completely copied from the English Act, and provides for a director being relieved by a Court on account of breach of trust or negligence. If it be found that he was acting honestly, he may be relieved by a Court.

Section 35 is quite innocuous. It merely corrects an error in the Act as it now stands.

The purpose of section 36 is merely to conserve the forms of the Department so that we can continue to call this Act, as amended, "The Companies Act," without calling it "The Companies Act, as amended." Thereby we can avoid the necessity of changing forms in the Department.

Section 38 makes the Act, as amended, applicable to all companies which have been heretofore incorporated under the Act.

Section 39 merely states the time when the Act comes into force. There are some clauses in respect to prospectuses which are delayed. The other clauses come into force upon the Act being adopted.

Hon. Mr. DANDURAND: If any members of the Committee desire further information, Mr. Mulvey is here to answer any questions.

Hon. Mr. BÉIQUE: I have a number of inquiries to make. I have perused the Bill, and I think it contains a good many things of value but there are others that I question seriously. The best way will be to deal with the Bill clause by clause.

There is a section which provides for the distribution of the capital of the company. Well, I doubt very much if this principle should be adopted by way of dividends. It may lead to a great deal of danger. That is one of the clauses to which I shall call attention. Then, there is a clause dealing with the issuing of stock. Heretofore the stock which was issued had to be paid for. Well, this provision is amended, and I am afraid that it goes too far. If a company has a lot of watered stock, I think the public should know of it, and there should be provision in that respect. Twenty to twenty-five years ago I suggested a provision which was incorporated in the Joint Stock Companies Act of the Province of Quebec, whereby a company is permitted to issue stock, rather than pay in cash, in payment for property or for contracts, provided it is in virtue of a contract, a copy of which is lodged with the Secretary of State, so that the public dealing with that company may know to what extent its stock may have been watered or may represent no value, or hardly any value, at all. When we come to the provisions dealing with that matter, I propose to suggest some amendments in that direction.

The ACTING CHAIRMAN: Any other questions, honourable gentlemen?

Hon. Mr. BÉIQUE: I would suggest now that the honourable leader of the Government should instruct the proper parties to prepare a bill containing all the machinery necessary for governing investment trust companies, and then when the Committee is dealing with this bill we can have the form of the other Bill before us and decide whether we should deal with these companies under the Companies Act or pass a special act to govern them.

Hon. Mr. DANDURAND: The honourable gentleman is not moving that, is he? I understand it is merely a suggestion that he is making?

Hon. Mr. BÉIQUE: Yes, a suggestion.

Hon. Mr. DANDURAND: I will bring the matter before the Minister of Finance, who will present it, in some form, to his colleagues of the Cabinet. If it is to become a Government measure, it will have to be drafted and adopted as such. Of course, any member in either House can always propose a public bill; but since we are seized with this Bill and dealing with investment trusts, I will convey to my colleagues the information that there is a desire expressed that a special act be framed to deal with this new form of company.

Hon. Mr. WILLOUGHBY: If you do you will eliminate the investment trusts?

Hon. Mr. DANDURAND: It would be of a different character, because those companies were always incorporated by the Secretary of State.

Mr. MULVEY: I would like to correct you there. They are not all incorporated by the Secretary of State. Any company that is under the Insurance Act, the Trust Companies Act, or several other Acts, must be incorporated by special Act of Parliament.

Hon. Mr. DANDURAND: Oh, yes, that I know. For instance, banks must come before Parliament.

The DEPUTY CHAIRMAN: That is by a special Act by Parliament.

Hon. Mr. BEIQUE: That is a detail. I would see no objection. To my mind we have the form of charter governing trust companies or loan companies or investment trust companies, whether they are incorporated by special Act of Parliament or by letters patent. I would not see any objection to giving to the Secretary of State the power to incorporate investment trust companies, but the working of the companies would be according to special Act, which would be an Act like the Insurance Act, or the Loan Companies Act or the general Act governing all those companies.

Hon. Mr. DANDURAND: Mr. Mulvey might tell us if this draft Bill has been circulated outside of Parliament.

Mr. MULVEY: It was circulated, immediately on being drafted, to a number of prominent lawyers who were dealing with companies, and many of their suggestions are incorporated into that Bill. As a matter of fact the knowledge of the lawyers who deal with companies is frequently much better than is obtainable in the Department, and we asked their advice and assistance. That is the only distribution that has been made.

Hon. Mr. DANDURAND: What is the opinion of the Committee in regard to the distribution of this Bill with the statement we have heard this afternoon? To whom should it go?

Hon. Mr. TESSIER: Boards of Trade and trust companies and loan companies.

Hon. Mr. LAIRD: The commercial interests of the country should be advised on an important Bill like this.

Hon. Mr. DANDURAND: I want the opinion of the Committee as to whom it should be sent—Boards of Trade, banks, trust companies, loan companies—

Hon. Mr. LAIRD: Investment trust companies, etc.

Hon. Mr. DANDURAND: Is that agreed, gentlemen? Then I move that the Committee rise, subject to meeting again at the call of the Chairman.

THE SENATE OF CANADA

PROCEEDINGS OF

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL (C), AN ACT TO AMEND THE COMPANIES ACT

(TOGETHER WITH SUGGESTED AMENDMENTS SUBMITTED BY WITNESSES)

No. 2

The Hon. F. B. BLACK, Chairman

WITNESSES:

Mr. P. F. Casgrain, K.C., M.P.

Mr. E. G. Long, K.C., representing Investment Bankers' Association of Canada

Mr. G. S. Stairs, K.C., Montreal, P.Q.

Mr. Frank B. Common, K.C., Montreal, P.Q.

Hon. Adrian K. Hugessen, K.C., Montreal, P.Q.

THE SENATE

STANDING COMMITTEE

ON

Banking and Commerce

1929

THE HON. F. B. BLACK, *Chairman*

Hon. Sir Allen Aylesworth, K.C.M.G., P.C., K.C.
Hon. C. P. Beaubien, K.C.
Hon. F. L. Beique, P.C., K.C.
Hon. N. A. Belcourt, P.C.
Hon. F. B. Black
Hon. J. A. Calder, P.C.
Hon. J. P. B. Casgrain
Hon. N. Curry
Hon. R. Dandurand, P.C., K.C.
Hon. J. W. Daniel, M.D.
Hon. J. H. Fisher
Right Hon. Sir George Foster, G.C.M.G., P.C.
Hon. G. G. Foster, K.C.
Hon. A. Haydon
Hon. J. J. Hughes
Hon. H. W. Laird
Hon. D. O. L'Esperance
Hon. W. H. McGuire
Hon. J. S. McLennan
Hon. L. McMeans, K.C.
Hon. C. Murphy, P.C., K.C.
Hon. A. E. Planta
Hon. J. D. Reid, M.D., P.C.
Hon. J. H. Ross
Hon. F. L. Schaffner, M.D.
Hon. E. D. Smith
Hon. C. E. Tanner, K.C.
Hon. J. D. Taylor
Hon. J. Tessier
Hon. I. R. Todd
Hon. J. G. Turiff
Hon. L. C. Webster
Hon. R. S. White
Hon. W. B. Willoughby, K.C.

ORDER OF REFERENCE

EXTRACT *from the Minutes of Proceedings of The Senate of Canada, 15th February, 1929*

Pursuant to the Order of the Day, the Bill (C), intituled: "An Act to amend the Companies Act," was read the second time, and—

Referred to the Standing Committee on Banking and Commerce.

84170—1½

MINUTES OF EVIDENCE

THE SENATE,
WEDNESDAY, April 17, 1929.

The Standing Committee on Banking and Commerce to whom was referred Bill C, intituled "An Act to amend The Companies Act," met this day at 10.30 a.m., Honourable Mr. Black in the Chair.

The CHAIRMAN: Gentlemen, we are ready to proceed with Bill C.

Mr. MULVEY (Under-Secretary of State): The gentlemen who are here to make representations on the Bill will do so generally, and it will be very difficult to have them make comments on the clauses one after another. Their comments will be directed to the underlying principles of the Bill, which will cover many clauses.

Hon. Mr. WEBSTER: You might confine the matter to those sections to which there is objection.

The CHAIRMAN: Those who are appearing in this matter are:—

Pierre F. Casgrain, Esq., M.P., Montreal, P.Q.

E. G. Long, Esq., K.C., on behalf of the Investment Bankers' Association of Canada.

G. S. Stairs, Esq., K.C., of the firm of Messrs. McGibbon, Mitchell & Stairs, Barristers, Montreal, P.Q.

Frank B. Common, Esq., K.C., of Messrs. Brown, Montgomery & McMichael, Barristers, Montreal, P.Q.

Hon. Adrien K. Hugessen, K.C., of Messrs. Lafleur, Macdougald & Barklay, Barristers, Montreal, P.Q.

Gordon Hyde, Esq., K.C., of Smith, Markey, Hyde, Skinner & Abern, Barristers, Montreal, P.Q.

Mr. P. F. CASGRAIN, M.P.: Mr. Chairman and honourable gentlemen, these gentlemen have asked me to represent them and to introduce them to your committee. They are all gentlemen who are well versed in The Companies Act and in financial institutions, and they have representations to make in regard to certain proposed amendments to The Companies Act.

Mr. JOHN APPLETON: Representing the Dominion Mortgage and Investments Association, I would like to say a word.

Hon. Mr. DANDURAND: Some of the parties who are here are to speak of the clauses covering investment trust companies. A Bill respecting investment companies has been prepared, but it has to come from the Department of Justice, and unfortunately it has not reached the Senate in time to be placed before you. It is my intention to suggest, after we have heard the argument of the companies to-day, that we adjourn to another day, perhaps next week, when we shall have the Bill which I intend to introduce this afternoon or to-morrow in the Senate.

Mr. APPLETON: Mr. Chairman, the Bill may cover the points I would like to bring to the attention of the committee.

Mr. P. F. CASGRAIN, M.P.: Mr. Long, of Toronto, is here.

The CHAIRMAN: Very well; we will hear Mr. Long.

Mr. E. G. Long, K.C.: Mr. Chairman and honourable gentlemen, I am speaking on behalf of the Investment Bankers' Association of Canada, an association which comprises among its members practically all of the houses that are engaged in the investment and banking business of selling to the public bonds and shares in securities of companies in Canada, and on their behalf I wish to draw to your attention certain matters and to register certain objections that we have to three or four main principles in the Bill.

The first item is in regard to what I have termed the prospectus sections, grouped under sections 15 to 18 of the Bill.

At the present time in the present Act we have prospectus sections which require the filing of a prospectus, or of a statement in lieu of prospectus, in connection with companies. The actual practice is that a statement in lieu of prospectus is filed with the Secretary of State, and the prospectus in the lengthy form required by the Act, with all the information under various sub-heads, has not gone out to the public for the obvious reason that it is practically impossible to do so. The present amendment requires not only the company who is marketing its securities, but any banking house or any underwriter who buys part or all of the securities with the intention of offering them to the public, to furnish this prospectus with the statutory information.

We take it that the object of the prospectus is for the information and protection of the investor so that the information which the wisdom of Parliament has crystallized into these various sub-heads will come before him and by a wild stretch of imagination if I may humbly suggest, give him sufficient information to make up his mind as to whether the security is good or bad. We feel that this type of prospectus given to the investor is not sound protection. Experience in the last decade or so has shown that that is not really the case. And the objection we are taking under this heading is that first of all you cannot by a crystallized form of half a dozen or so sub-headings give sufficient information in every single class of business which comes under Dominion incorporation to let the investor make an independent decision on that stereotyped information as to the soundness of a security.

The second point is that a similar type of protection found in what are known as Blue Sky laws was originated years ago in the United States. The principle was that a company to float its securities had to give information to a government official. The government official said whether the security was good or bad, and if he thought it was good he gave his approval and allowed it to be sold to the public. Experience in the last ten or fifteen years in the United States has shown that this system has not operated as a protection to the investor. Still less, we think, has the information this Bill requires to be sent out to the investor in the form of a prospectus, any real basis on which they can reach a real conclusion. And I have received from the council of the Investment Bankers' Association of America, which comprises ninety per cent of the investment banking houses of the States—after communication with them regarding their experience in regard to this information which is given under the Blue Sky law and which has been made free to the public—their opinion that these types of law requiring this information have not been found satisfactory; that they have not prevented investment in unsound securities; and that the investor is not getting the protection which was anticipated.

That was the early step to try to give information to the investor via a government official. Practical experience has developed in the United States and in a number of our provinces the theory that the way to protect the investor is to have some sort of control over the individual who goes out and tries to sell securities; and that the government should be satisfied that that man is reputable, and, having control over him, if he over-steps the bounds of proper business and honesty that he be immediately punished. Then you have, according to the experience of the last five, six or seven years in the

United States, and for a year in Ontario, the best protection which you can give, so far as practical experience goes, to the investor when he is buying securities. The prospectus sections require filing in Ottawa; and there are other jurisdictions in which prospectuses must be filed; so that you have in Canada a multiplicity of jurisdictions all of which may require a prospectus in their own particular form.

Recently, the control by the provinces has been very marked in legislation such as was brought down in Ontario a year ago called the Security Frauds Prevention Act, which, in effect, requires all people engaged in the selling of securities to become registered with the Provincial department under the control of the Attorney General. Nobody can sell securities in Ontario unless he has a registration license; and that has given the province the control over the human element that meets the investor. This has shown very satisfactory results, and the Attorney General's department was so good as to write me a letter stating that they have found the Security Frauds Prevention Act, with its licensing powers, "a satisfactory protection to investors and a reasonable curb of the activities of fraudulent promoters."

Accompanying that Act giving control over the salesmen is the Companies Information Act which requires the companies on the sale of their securities to put on file in the Attorney General's department, or the company's branch, a certain amount of information, somewhat more lengthy than what you have in the draft bill here. That gives the Attorney General's department information in regard to the company, so that there is a double check in their control over the salesman and information in regard to the company. If the information is found not satisfactory it acts immediately through his control over the salesman who is selling those securities.

Hon. Mr. McMeans: That applies to Ontario only?

Mr. Long: This plan in Ontario has been adopted almost verbatim—the statute has been copied almost verbatim in Saskatchewan and Alberta this year, and the principle has been adopted in Manitoba. So that in Alberta, Saskatchewan, Manitoba and Ontario you have this control; that is the double control over the salesman plus the information which goes in as a government record; and in Quebec they have the necessity for filing a very lengthy return —the most complete information of any of the provinces. Our information is that the provincial control over these matters is so complete now that the necessity for burdening companies with information which we consider unnecessary, or which I submit is unnecessary, no longer exists; that to make of value to the public what this Act would require does not need the amendment which we have got in the Act before us. The control by the provinces gives the investor throughout Canada the best protection he can get. That is the general principle that we submit in regard to the protection of the investor.

Assuming from a practical point of view that the banking houses will have to comply and that the requirements of the Act are lived up to by the reputable people in the business; the people we want to catch are the fraudulent promoters who are committing, knowingly, frauds; who are selling, knowingly, unsound securities; and who would be taking the chance of paying practically no more attention to the Statute than they do to the Criminal Code. If we are bound as legitimate dealers to comply with this, see what the practical burden is. You have information in your prospectus running from subhead (*a*) to subhead (*p*) in section 51, and one only needs to take up two of these sections to emphasize the amount of information.

Subsection (*a*) "the main purposes or objects of the company . . ." You gentlemen know, and Mr. Mulvey knows, that the objects in a Dominion company run to pages and pages of typewriting.

Another reference is to subsection "*f*" which requires the names and addresses of the vendors of any property and the consideration they get. You will find in flotations of any particular size, particularly where one company may be taking over the shares from individuals or another company, that you may have a list of hundreds of names.

Hon. Mr. DANDURAND: That is not brought in by this bill.

Mr. LONG: No, sir; but the point is that in the Act as it has been administered up to date there has been a sufficient compliance with it, to file your statement in lieu of prospectus which no one objects to. It gives Mr. Mulvey his record of the position of the company. But this new clause is a case where every time you give a notice offering securities for sale, every time you advertise, every time you write a letter, if you telegraph, you are within the definition of the prospectus sections; because, under the Act, a prospectus is described as any notice calling or suggesting that shares are for sale. If you write a circular letter to prospective customers then you have to give the information required by the sixteen subsections.

Another item: Under subsection "*n*," for instance, where you have to give the particulars as to the different classes of stock, as Mr. Mulvey will bear me out, preference stock conditions are run to enormous typewriting length. There are preferences as to dividends and assets, provisions for redemption, for conversion, voting and non-voting rights, conditions against mortgages or other issue of securities; and you will have pages of typewriting in any corporation issue of any size to comply with that one item; and our contention is that if this section is maintained, and if its requirements are lived up to, namely, that every time a company, or every time an underwriting house that buys the shares makes a suggestion to any customer that such customer should invest his money in such securities, then a volume has to be given to him if the section is honestly lived up to.

Speaking for our association, we feel that there is sufficient honest desire to comply with any statutory requirements that it will be done if it has to be done; and, if so, you are forcing on the financial community a burden which will be almost impossible of fulfilment; and I submit that legislation which is practically impossible of practical fulfilment is not the kind of law which this Parliament usually enacts. It simply brings the law into disregard or contempt simply through the impossibility of an honest man living up to it.

The second burden is that the Act requires not only companies but every underwriter to give this prospectus information; and, in addition to that, there is a clause that a prospectus must accompany all applications for purchase of securities. That raises two practical questions. Securities are sold very largely in Canada through personal contact and other personal conditions. That brings in the element of the salesman, and it is obvious that all salesmen do not always live up to all the instructions which are properly given to them. A salesman goes out to sell securities and infringes a provision of the Act. When he gets an application from a customer he does not give him the prospectus. There is a disregard of the mandatory provision of the statutes of Canada. What may happen? There is liability on the company for non-compliance with the Act. And there is, undoubtedly, the question as to whether such application is binding on the customer. It may not be valid through non-compliance with this regulation. The customer can at any time come back to the issuing house or to the company itself and say: "The arrangement we entered into is a nullity; I want my money back." And it is a very serious question in the mind of the companies and underwriters as to whether the subscriptions they have received in good faith could, at a future time, be cancelled or set aside on account of failure to comply with this mandatory provision. The clauses in the Act

relating to underwriters and companies furnishing the prospectus to their customers is really a copy of the English Act of 1928, and the English practice of doing business is quite different from the practice in Canada. You gentlemen know that probably better than I do. A very striking example is this: In England it is a crime for a person selling securities to go to the individual at his home and try to sell him any security.

Hon. Mr. TESSIER: It is a crime?

Mr. LONG: By Act of Parliament brought into force in 1928. In the United States and Canada a very substantial portion of the distribution of securities is done in a way which, if done in England, would render the seller liable to go to jail. So that there is that difference in the two principles underlying financial matters as between Canada and this continent, and England; and for that reason, while one bows to the wisdom of the English Parliament and to the English financial world, we must recognize that there are distinctions, and this is one distinction in which we think the English practice is not appropriate for the financial business of Canada.

In England, also, there is this marked difference, that there is no control over the individual broker or dealer who sells securities. It is all done, in a dignified way through a public issue by a banking house, through newspapers, and subscriptions made to that banking house, or else handled through the customer going to his firm of brokers.

Hon. Mr. TESSIER: There is no convassing from door to door?

Mr. LONG: No, sir. Here we cannot do away with that personal canvas. It would be an unthinkable thing, but we do meet it by a control which I have mentioned. That control has never been thought of in England and is not in existence there.

That is as short a summary as I can make here of our suggestions that these prospectus sections be eliminated. I would urge the committee to eliminate these prospectus sections entirely, leaving, if you thought fit, the requirement that the company should file with the department a statement in lieu of prospectus which will give Mr. Mulvey and the public, through access to public documents, information in regard to each company that he incorporates and which carries on business here. But don't burden the companies and the underwriters with the absolutely impossible situation of including in every letter, in every advertisement which goes to a newspaper, the prospectus information in these different sub-heads, and which would run to many, many pages. This cannot reasonably and honestly be lived up to.

A repercussion of the prospectus sections is found in Section 18 which provides that no allotment of shares and no allotment of debentures can be made until a prospectus or statement in lieu of prospectus has been filed with the Secretary of State. That, in theory, is doubtless to protect the investor so there will be put on public record this information before stock can be allotted. They would have the same protection in Section 28 of the Companies Act, which requires that the company shall have ten per cent of its capital subscribed before it can commence business. This is apart from the bill, except where I tie it into Section 18. But the effect of these requirements in practical business is this: They give little, if any—no protection, to the investor, and they create a condition precedent. A company must comply with the condition of filing a prospectus or statement in lieu. It must comply with the condition that ten per cent of its capital is subscribed before it can legally exercise its corporate powers. What you find is this: many companies from neglect, from carelessness, from oversight fail to live up to these conditions precedent, and then what happens? All future business of the company, all future allotments of stocks, all acts, are subject to question. So that, instead of protecting the public there

the reverse effect—and this is something that any lawyer who does much of this company business will tell you—often they meet most embarrassing questions. For example a company issues debentures, or sells shares, and the public buys them, and on liquidation or some question of company powers, the whole thing is in effect a nullity. Instead of protecting the public you will find the public injured in many cases, and there are decisions in our courts of debenture issues being invalidated where there has been no prospectus filed. The investor has invested money in good faith, and it is through non-compliance with this statutory condition precedent, which, I submit, has no practical value, that his securities are practically useless.

That is, shortly, the objections which we submit from the practical and from the legal point of view to this general principal in sections 15 to 18 dealing with prospectuses.

Another item I submit to the attention of the committee is section 20 of the Bill which enacts sections 56A to 56D. We are particularly interested in section 56C. It, in effect, provides that a company may issue preference shares which are at the option of the company liable to be redeemed provided no shares shall be redeemed except out of profits otherwise available for dividends or out of proceeds of a fresh issue. This is practically a verbatim copy of the Act of 1928 passed in England, and the reason for passing the Act in England was that up to 1928 there had been no such thing as a redeemable preference stock where the stock could be redeemed at the option of the company. If you wished to redeem any of your shares you had to go through a rather lengthy or cumbersome procedure of reducing your capital. It was felt, apparently, by the committee who had charge of making the recommendation to Parliament in England for an amendment of the Companies Act that redeemable preference stock, redeemable at the option of the company, was a desirable power to insert in their statute.

I will read a few sentences from a pamphlet that was prepared by a very eminent English lawyer who was a member of the committee. He is referring to its counterpart in the English Act of section 56C:—

> "By section 18 companies are given the right to issue redeemable preference shares, but this right is so hedged around with restrictions that it may not prove to be of much use in practice."

In other words, that member of the committee, who is a lawyer who has probably as wide an experience as anyone else in London in corporation matters, indicates that he feels this section will be of little practical use in England. In Canada we have redeemable preference shares not only under the Dominion Act but under the Provincial Acts. In England, the reason for the lack of redeemable preference stock was their preference for financing through debentures and debentures stock. We haven't followed that so much here, because debentures and debenture stocks carry a fixed charge for interest. Preference stock, carrying fixed dividends, does not impose a burden on the company unless there are profits to pay dividends. So that Canada, again, has a practice which is different from that in England; and we have always felt that we have the power to pay off preference stock out of any available funds which the company may have for such purposes, but it would be a very serious thing in practical business if this right to redeem were limited as mentioned in this section. Investment bankers tell me, and I have a member of A. E. Ames & Company here to confirm this, that you will very frequently find a company with a surplus of liquid funds which it does not need in carrying on its business. They may arise through a thousand different causes. A company may have sold a capital asset; it may have three or four businesses and may have disposed of one; it may have lost a piece of property through fire and does not wish to rebuild. Here is free cash not required to run the business, and properly

used for redeeming a preference stock on which a heavy dividend rate is payable. If you adopt this English practice of saying a company can only pay out of earnings which they have accumulated, then you hamper the freedom of the company's management in doing its best for itself and its shareholders and everybody else interested in it; and we earnestly submit that instead of adopting this new and questionable departure in England, as admitted by this member of the committee, you allow us to remain as we are under an Act which, speaking from the point of view of the people I represent and the legal standpoint, has worked out satisfactorily. I have never heard that Mr. Mulvey had had any criticism of the way it has worked out, or objection taken by shareholders or creditors to the practical redemption of capital stock preference shares under the existing provisions of the statute. But to tie it down in the way this is proposed to do would simply be to throw out of alignment and to put obstacles in the way of a very common and satisfactory form of financing which has obtained in Canada for years. We earnestly suggest that it be not adopted.

There are some other special clauses in the section that I will not attempt to take any time with. I might mention as a matter of record subsection (c) of 56C which provides that where shares are redeemed out of profits there shall be a transfer of a like amount to what they call a capital redemption reserve fund which must be kept as a capital asset. In effect, what the company has to do is this: You have your accumulated surplus profits and you use them to redeem your preference stock. You reduce your liability on capital, say, by a million dollars by taking a million dollars off surplus profits, and you have to put back and crystallize into capital reserve fund another million dollars. It would seem, if you want to act under this statute, you have got to practically tie up two dollars for each one you get rid of—a perfectly impractical situation, and a very obvious example after the comment I have read concerning England, that they do not think this section will be of much practical use.

Another item that we would question is the provision in section 30 of the bill which enacts a new section 119A dealing with the accounts which a company is required to keep. The point of interest is subsection 4 on page 24 of the bill, where the directors are required to make out and lay before the company a balance sheet with the report by the directors. There is no objection that far. But the next point is the report by the directors with respect to the state of the company's finances; the amount, if any, which they recommend should be paid by way of dividend, and the amount, if any, they think should be carried to the reserve. That would seem to indicate that shareholders should have some control, if it means anything, over the finances of the company in relation to dividends and in relation to reserves. The two are practically complimentary. At the present time under our Act, it is specifically provided that the affairs of the company, being under the control of the directors, they are allowed to deal with matters of dividends. Dividends, as you know, in a great many companies are declared half-yearly or quarterly. Whether they should or should not be declared is a matter for the directors, and they make up from the accounts how much accumulated profits they want to give to the shareholders, and the responsibility rests entirely on them. The shareholders have never, up to date, had anything to say with dividends or the distribution of the company's funds in that way. But, here, this section makes the directors say what they recommend as dividends. Inferentially one would think that that would require some act by the shareholders. There is no object in having the shareholders comment on them. If they think the directors have not been wise, it is a simple matter to have a new board of directors elected. The same applies to the general reserve account. This is another case where you have a similar statutory provision in England; but I am told that in England the dividend system is rather different in practice from ours—the directors follow

the practice of declaring what they term an interim dividend, if they want to declare one during the course of the fiscal year, they come before the shareholders at the annual meeting and say that they have paid so much in interim dividends and propose a final dividend, and the shareholders are consulted in that way. We do not have any such thing as that. This requirement that the shareholders have something to say about it would be quite at variance with the practice that the regular preference dividends, if there is something to be paid, almost automatically must go to the shareholders.

These are the matters of principle which we respectfully submit to the committee. The matter of drafting is not an item which I would attempt to suggest to this committee. It would not be possible to draft anything until we know what their views are on the suggestions made. These are matters of vital importance, and I cannot stress them too much. Canada has become more and more an investing country by herself, and the business of selling sound securities in Canada should not be fettered. Perhaps I might refer to one or two clauses.

Hon. Mr. WEBSTER: What was the practice in England in regard to the last clause you were dealing with, and why does that obtain in England now?—

Mr. LONG: I don't know, sir. It is one of those things that has probably run for years and years; but they have a different system.

Hon. Mr. WEBSTER: I refer to the point of calling a meeting of the shareholders for the purposes of declaring dividends.

Mr. LONG: I don't know that that meeting actually declares dividends. What happens is that the directors say, "Here is our statement. We may have declared some dividends, but we think that if you shareholders are satisfied, we will declare a dividend of, say, eight per cent for the past fiscal year."

Now, that is the responsibility placed by statute upon the directors. There is no control by shareholders over dividends hinted at anywhere except inferentially in this one clause of the bill, and that inference should not remain. If the statute does remain, I do not know what the effect would be. If the directors say, "We have declared a dividend and we recommend you to approve of it," and if the shareholders do not approve of it no result can accrue because on the declaration of the dividend there is an immediate legal obligation on the company to pay to each shareholder the amount declared. I fancy, also, in England, you will find more interest among the shareholders in the matter of attending meetings than is found in Canada. The average annual meeting of the average company in Canada is usually very lightly attended; it is made a purely formal matter. The only time they have a good attendance is when there is likely to be a fight.

Just apropos of this point I would like to stress as much as possible that legitimate financing—which represents—I do not know whether it would be out of the way to say over 90 per cent of the money that is put into securities in Canada—should not be hampered. I would point out two items in the report of the Company Law Amendment Committee in England. This was a very outstanding committee of financial men and lawyers in England whose report resulted in the 1928 amendment:—

> "The evidence satisfies us that the great majority of limited companies, both public and private, are honestly and conscientiously managed."

I do not think that we need feel that that would not apply as much to Canada as to Great Britain.

> "Many of the suggestions made to us show that the idea that fraud and lesser malpractices can be stopped by the simple expedient of a prohibition in an Act of Parliament dies hard."

Prohibition by Act of Parliament does not accomplish either in financing or other things the effect which modern and energetic promoters hope.

Hon. Mr. LAIRD: What prohibition do you refer to?

Mr. LONG: It is a matter of opinion:—

> "It appears to us as a matter of general principle, most undesirable, in order to defeat an occasional wrongdoer to impose restrictions which would seriously hamper the activities of honest men and would inevitably react upon the commerce and prosperity of the country."

Hon. Mr. MCMEANS: Is that an English matter?

Mr. LONG: This is the Companies Law Amendment report of 1925-26. It is from a memorandum addressed to the President of the Board of Trade, and I have taken these two items as showing the English feeling. What I am trying to submit here is that we must recognize the burden contained in the prospectus and the preference stock—particularly the prospectus; and that in order to catch the occasional wrongdoer they have made the burden a matter of extremely serious consequence to the legitimate financial business of the country.

Hon. Mr. BEIQUE: Are we to understand that the objections are restricted to the amendments, or are they extending to the provisions of the Act as it stands?

Mr. LONG: I might say I would like to extend them to the circumstances as they now exist *in toto;* and my reason is that the investors are protected by all the provincial laws, and the prospectus sections are an additional burden on the companies, that add nothing to the provinces, and their control is in regard to civil rights, which the provinces have already protected.

Hon. Mr. BEIQUE: I am inclined to think from your argument that you think the public interest would be better safeguarded by having an official in the department of the Secretary of State who would be the guardian, so to speak, of the interest of the public, and would have the power to demand such information as he would desire, and who could make regulations from time to time governing the companies, which would be flexible and could be amended as required, instead of embodying these matters in statutes? What I have in mind is an officer in that department who would act as Mr. Finlayson acts in the Insurance Department—the Finance Department. He is the advisor of the department on the rules that are in force.

Mr. LONG: That is, I take it, very similar to what we find in Ontario, as the typical case. In Ontario, when a company wishes to sell its securities it files with the Provincial Secretary a form containing a lot of information. Everybody who sells—and I think this is the only way that you could satisfactorily work out the control—must be licensed and registered by the Attorney General's department. The same thing applies to insurance agents. Ontario put through another bill at the session which recently closed, making the same act apply to real estate agents, feeling that control over these persons is for the protection of the public. Now, the combined result is that the Attorney General can look at this information in time and he can say, "You had better not sell until I am satisfied that what you are selling is all right." He can demand further information. If he feels that it is fraudulent he can say, "No, you must not sell this. If you do your license will be revoked, and there is a very heavy penalty." Now, it would seem an unnecessary duplication almost to try to have anything similar to that in Ottawa, because the enforcement of it really depends on provincial procedure.

Hon. Mr. BEIQUE: But can the authority in the province of Ontario deal with investors in Quebec, for instance? Would that apply?

Mr. LONG: No. Their jurisdiction would only apply to the individual who, in Ontario, was selling securities; and, of course, the weakness which can be found in the provincial case is that the province has no control over the mails, and there may be circulars going through the mails.

Hon. Mr. BEIQUE: My last question is: You take exception to the provision of the Act prohibiting a company commencing business before ten per cent has been paid up?

Mr. LONG: I would say "yes," Senator.

Hon. Mr. BEIQUE: I am rather surprised. I appreciate your objection, but it can easily be met in this way: that the provision would have the effect merely of making the officers of the company liable to a fine; but it could be recommended that it would not nullify the operations of parties.

Mr. LONG: I am absolutely in accord with you. The matter which I may describe as a terror to lawyers is where we find an Act of Parliament where non-compliance with it creates a nullity.

Hon. Mr. BEIQUE: Your objection is sound. It can be removed, keeping the safeguard in the fact that the company should not be allowed to commence business without a certain amount for the protection of the public.

Hon. Mr. WEBSTER: Do you feel that the public is sufficiently protected at the present time without the addition of these amendments?

Mr. LONG: Absolutely. Experience has shown it, and evidence could be piled up to demonstrate it. I am quite positive.

Hon. Mr. TESSIER: You do not want this bill at all; you are satisfied?

Mr. LONG: There are a lot of very excellent provisions in this bill indeed.

Hon. Mr. WEBSTER: You refer to the amendments?

Mr. LONG: I am referring to the sections other than the propectus sections.

Hon. Mr. MCMEANS: I understand you to say you object to the old provisions of the Act?

Mr. LONG: The old provisions in the Act were not lived up to. For instance, to give them their full and strict meaning, I think the old Act was capable of the construction that where a company itself sold its shares, every offering it made had to contain a prospectus, and had to contain all the information. Now, very few companies go direct to the public, and their securities are usually sold in public matters by banking houses. The section did not apply to them.

Hon. Mr. MCMEANS: Your answer is that you do object to the old provisions?

Mr. LONG: Yes.

Hon. Mr. MCMEANS: So, there would be no provision at all in the Act where there would be either a prospectus or a statement filed?

Mr. LONG: Quite. Now, may I say there that I see no objection. One would be willing and quite glad to put on record with Mr. Mulvey certain information concerning each company that he incorporates to show that the company has commenced business. That is a public document, and it may be that the Secretary of State likes to know what his children have developed into; in Ontario they simply cut out of their Companies Act completely everything that dealt with prospectuses, and their prospectus sections, up to the time of the amendment last year, were practically the same as in the existing Dominion Act. They have substituted this control over salesmen and the filing with the department of certain information, and they have found that it has worked out excellently; and I can speak for the members of the Investment Bankers' Association, who have co-operated with the Attorney General's department, and various other public bodies such as the Board of Trade and business bureaux.

They have co-operated with the Attorney General's department, and they have cleaned up a lot of very unsatisfactory types of individuals, and they have taken very active steps in this direction, and the year's experience has shown good results.

Hon. Mr. McMeans: What protection would the public have? I understand from what you have said that you are opposing the Act incorporating companies. If there is no provision made for filing a statement or a prospectus, does the public have any security at all?

Mr. Long: Do you mean when that company's shares are offered to you as an investor?

Hon. Mr. McMeans: No; the formation of the company all the way through.

Mr. Long: The prospectus has nothing to do with the formation of the company except that it is necessary to file a statement in lieu with the Secretary of State, and I am not quarrelling with that, although I do not think it is of very much value. Leave it in if you want to, but don't require us to supply this enormous amount of information every time a man invests his money.

From the point of view of the association I represent, we are not subject to that under the existing Act, because the existing Act applies to the companies selling their own securities, and not to dealers selling securities they own, as you have seen in advertisements, "We own and offer."

Hon. Mr. Dandurand. If it is good to ask the company to file a statement, and the company runs away from that obligation by having a substitute or an agent who declares, "We own and offer," should not the party which owns and offers make a similar statement inasmuch as all the securities would go into the hands of the public?

Mr. Long: That is a conclusion that might be drawn if you start off with the premise that it is necessary to have a statutory form given to a prospective investor. If you simply file that statement you have the information on public record. You have a standard prospectus form for every company—a pulp and paper company, a boot and shoe company, or any other company—but it requires almost superhuman skill to prepare a standard form that will give a man independent information on every one of these different businesses upon which he can pass judgment as to whether the securities are sound or not.

Hon. Mr. Tessier: The investor wants to know what he is buying. Sometimes he does not know what he is buying.

Mr. Long: Now the investor in Ontario, in Manitoba, in Alberta and in Saskatchewan and in Quebec is protected fully under these provincial laws.

Hon. Mr. Beaubien: But in Quebec they have to file a prospectus.

Mr. Long: Yes.

Hon. Mr. Beaubien: Do I understand that they haven't got that obligation in Ontario at all now?

Mr. Long: Yes; they have an obligation, like Quebec, to file the information; not quite as elaborate as Quebec.

Hon. Mr. McMeans: Only applying to provincial companies?

Mr. Long: No; to every company.

Hon. Mr. Beaubien: Every company selling in Ontario.

Mr. Long: Every company whose securities are sold in Ontario or who establishes a business there, thereby putting them under Ontario jurisdiction.

Hon. Mr. McMeans: We would have very grave doubts about whether a dominion company complying with the Dominion Act—whether the provincial government would have the right to impose conditions.

Hon. Mr. WEBSTER: It has been enforced. The province of Quebec has had to investigate Dominion companies.

Mr. LONG: The provinces have got around that, and have control over Dominion companies now through the control over the individual who sells dominion securities.

Hon. Mr. BEAUBIEN: Now what do you think of the suggestion of forcing the companies who incorporate here practically to fulfil the same obligations as in the provinces. You have to file a statement in Quebec if you want to sell. That document, standardized, so to speak, would have to be registered here? I understand you object to burdensome obligations so you want to simplify them as much as you can?

Mr. LONG: Yes. As far as filing goes, Senator Beaubien, one would have no objection to filing, if you could get a standardized return. Now, Quebec has got an enormous amount of information required. Ontario has something different. Manitoba and Saskatchewan have their own forms. We are different from Great Britain; there is the question of jurisdiction. We have a number of jurisdictions. We do not mind that question of filing information with the government department. That is not what we are quarrelling about; it is the impossible obligation of giving that volume of information in the form of a prospectus in every advertisement, every circular, every letter, even every telegram which contained an offer to sell shares or securities. How would you like to give all the material that you file in Quebec every time you approach a man and ask him to buy shares of stock or put an advertisement in the paper or write a potential investor an offering letter?

Hon. Mr. WEBSTER: It is not the method of filing this prospectus you object to?

Mr. LONG: No. It is the condition requiring financial houses to give that prospectus every time anybody is invited by personal canvas or by a letter or telegram to buy shares or securities.

Hon. Mr. MCLENNAN: I think I have seen a short prospectus in an English paper.

Mr. LONG: The English Act has not yet been brought into force; what they call an abridged prospectus can still be used.

Hon. Mr. BEIQUE: As far as I am concerned, I should like very much to have your suggestion as to the prospectus which should be required.

Mr. LONG: Do you mean for me to say right now, sir? That is a little difficult. I should like to submit it.

Hon. Mr. BEIQUE: Put it in writing.

Hon. Mr. BEAUBIEN: Mr. Long, I did not quite catch your objection to section 56. You say that according to section (*a*) preferred shares cannot be redeemed except out of profits or out of the proceeds of a new issue.

Mr. LONG: That is 56 (*c*), sir.

Hon. Mr. BEAUBIEN: You give the example of some bit of property forming part of the assets of the company being sold. The directors do not know what to do with the money, and they say it would be a good thing to buy back a portion of the preferred issue.

Mr. LONG: Yes.

Hon. Mr. BEAUBIEN: That would be a reduction of capital.

Mr. LONG: Yes.

Hon. Mr. BEAUBIEN: Surely the company would have the right to avail themselves of the provisions of the law and reduce their capital?

Mr. LONG: Yes, sir.

Hon. Mr. BEAUBIEN: Therefore this section only applies when through a process of that kind the capital is not reduced. And don't you think, if that is the case, it is quite right that the law should say—

Mr. LONG: No.

Hon. Mr. BEAUBIEN: —that you shall not reduce your capital—because that is what it means—you shall not buy back part of your preferred issue execept out of profits or out a new issue.

Mr. LONG: No, I would submit not, sir, because, as you know, a very common form of financing now is the preferred stock; for instance, with a sinking fund, where each year the company buys back some of its stock. That need not be done out of accumulated profit. We have always been able to redeem stock that way, and if you did not want to do that, every time you wanted to redeem a few shares you would have to go through this rather difficult procedure which mean an application to the Secretary of State, a meeting of the shareholders, and supplementary letters. Is there any objection to following what is already the law, that your letters patent say the stock can be redeemed under certain conditions?

Hon. Mr. WEBSTER: In whole or in part.

Mr. LONG: Yes.

Hon. Mr. BEAUBIEN: But you cannot do that out of your own capital without reducing your capital.

Mr. LONG: Your capital is reduced, of course, but you have that anticipatory reduction in the instrument that creates the company.

Hon. Mr. WEBSTER: Some companies have the right to reduce their preferred stock without calling a meeting of the shareholders.

Mr. LONG: Practically all. It is a very common form.

G. S. STAIRS, K.C., apeared before the Committee.

He said: Mr. Chairman and gentlemen, I am not here representing anybody in particular, I am simply here as a lawyer practicing a good deal under this Act, in the hope that I may be of assistance in improving it.

I want to say first of all, that taking the Bill generally and throughout, in my humble opinion it contains a great many very valuable and useful improvements to the Act. I do not propose to go over the ground that has been covered by my learned friend Mr. Long, but I should like to associate myself generally with what he has said about the principle of the prospectus amendments, and the principle of the amendments in regard to the redemption of preferred stock. I might say, just by way of emphasis, without labouring it, that the line we wish to draw is the line between the sale of securities—shares or bonds—by owners of them, and the offering for sale of shares or bonds by the company for its own account.

The sale of shares and bonds by owners is a matter of ordinary commercial business, and I agree with Mr. Long that it can very well be left to be regulated by the provincial laws, the ordinary laws regulating property and civil rights and commerce generally. I do not think it necessary that this Parliament should attempt to make the provisions of the Act follow the shares right through to their destination, except as it is necessary in the constitution and so on of the shares themselves. But with regard to the offering by a company of its own shares or its own debentures to the public, that, in my experience, is a very unusual thing in Canadian practice. I have been in practice for some years and I have never had but one case under the Dominion Act of a prospectus, a real prospectus, that had to be published by a company publicly offering its

own shares; and it was such an unusual thing in my practice and in the experience of the people dealing with it that it gave a great deal of trouble. We eventually got something that we thought and hoped would conform to the very rigorous requirements of the Act, and which at the same time was practicable, and we had it signed and filed, and the people that were offering the stock used it as a basis of their offers. That has happened only once in my experience, so I think you may take it, gentlemen, that the situation you have to deal with in this country is the sale of shares and other securities of companies by people who have taken them firm, as we say, *i.e.* who have bought them and are selling for their own account.

I also might offer this suggestion. It seems to me that if you examine the prospectus requirements, it is a mistake to think that they are framed with the idea of enabling a man to say whether a security is sound or not by reading the prospectus. I think the real intention to be gathered from the prospectus sections and the jurisprudence, the English jurisprudence, is that they are intended simply to disclose promoters, interests and profits and things of that kind. In practice in this country, as Mr. Long has pointed out, it is practically impossible in the way in which we do business that there should be a strict compliance with the requirements, for that would necessitate embodying all the information in every circular or letter given to anybody. I do not object so much to the necessity of filing information. Those of us who are interested in the Act, particularly those who practise a good deal in advising the investment banking houses, might say that our main objection is to these provisions of the Bill. I think that the prospectus provisions of the Act as it stands could, from the point of view of the companies, be improved, and I would suggest a slight revision,—probably Mr. Long will look after this when he is preparing the amendment which he has been asked to submit—so as to show clearly that they do not apply to persons offering for their own account and not for the account of the company.

I agree too with Mr. Long on the redemption of preferred stock. For a good many years companies have been free to redeem preferred stock in accordance with whatever conditions they put in it when it was issued, though that operated from time to time as a reduction of capital not carried out under the other sections of the Act. It is a reduction of capital which is contemplated in the conditions of the stock when issued, and any person who extended credit to a company simply because he knew it had an authorized amount of stock would be a very imprudent person. I think this idea of prohibiting reduction of capital in the interest of creditors and so on is rather a shibboleth. Nobody ought to extend credit to a company without looking at its balance sheet and examining into the condition of the company, and nobody can get any such information on the actual condition of a company in any possible way from what is at present on file in public departments, or anything that might be required to be filed there.

I would like the indulgence of the Committee just for a few moments. I have one or two points that I should like to make. There is nothing that involves any very serious principle such as we have already heard, but there are one or two little points that I should like to mention. The simplest way is to take the sections of the Bill as they come. Section 3 of the Bill repeals and re-enacts section 5 of the Act, which defines the power of the Secretary of State, and the limitation of that power in regard to what companies may be incorporated. The Act has been improved, or will be improved, if the suggestion is adopted that these words "within the meaning of the Insurance Act," and "within the meaning of the Loan Companies Act" are added. I would like to suggest that the exception in regard to the construction and working of railways or telegraph or telephone lines be restricted by the insertion of the words "within Canada,' after the words "telephone lines" in the 10th line of subsection one. There is a great deal of Canadian capital invested abroad, especially in South American and Central

American countries, and particularly in public utilities enterprises, and as a rule it is found that the best vehicle for that is a British company. Naturally Canadians would incorporate a Canadian company. If you are going into one of those Latin countries it is well to have the protection of the British flag, and it is embarrassing, sometimes, if you want to take over an enterprise which may include a tramway or telephone line, not to be able to get a charter from the Secretary of State. Personally I can see no reason why Parliament should not permit companies to be incorporated to operate outside of Canada, where the Railway Act does not apply, only subject to whatever local laws may be in force in the place where they are to carry on business.

Section 6 of the Bill deals with the form of capitalization through no-par-value shares, and the Bill embodies a number of changes. I would like to submit another change which involves the substitution of another form for subsection 4. Subsection 4 of section 9, as included in section 6 of the Bill, defines the method by which the consideration for the no-par-value shares to be issued is to be fixed. Consistently with the principle upon which the consideration for the issue of par value shares is fixed—subject to the limitation of the shares themselves, that they cannot be issued at a discount or under par—I submit that no-par-value shares should in normal cases be issued for consideration as fixed by the directors, and the section should be turned around and be made to read:

> In the absence of other provisions in that behalf in the letters patent, supplementary letters patent or by-laws of the company, the issue and allotment of shares without nominal or par value authorized by this section may be made from time to time for such consideration as may be fixed by the Board of Directors of the company.

With your permission I will hand to the Clerk a memorandum of the form of that amendment.

There is another slight change in the phrascology, just to correct what I think is probably an accidental change in sub-section 6 of the same section. That section deals with the amount of capital for the purpose of the clauses regarding the declaration of the dividends, so as to establish what capital a company may have in order to fix the correct amount of its operating capital. It begins on page 2, referring to section 9 of the principal Act. The Bill would provide that the amount of capital should be the amount received for the no-par-value shares issued and the amount received in consideration for all other shares. The par-value shares might conceivably be issued at a premium. If this is allowed to stand it would have the effect of capitalizing the premium, and would establish a different rule when both par-value shares and no-par-value shares are issued from the rule that applies when there are only par-value shares. I think it would be a mistake to have that different rule in the Act. I have got an amendment to correct that:—

> For subsection (6) of section 9 of the principal Act, as repealed and substituted by section 6 of the Bill, substitute the following:—
>
> (6) The amount of capital with which the company shall carry on business shall not be less than the aggregate amount of the consideration for the issue and allotment of the shares without nominal or par value from time to time outstanding, and in addition thereto an amount equal to the total nominal amount of all other issued and outstanding shares of the capital stock of the company issued as fully paid and the total amount for the time being paid up on such other shares of the capital stock of the company as are issued and outstanding otherwise than fully paid.

With reference to those sections generally, it has been suggested to the department, to Mr. Mulvey, by a number of people interested in the Act, that

there should be a further revision to enable the consideration for the issue of no-par-value stock to be fixed in such a way as would enable a company, particularly a reorganized company, to carry forward a profit and loss surplus, if such existed in the original company. I have not an amendment ready; perhaps some of my friends may have. That is very desirable for business reasons, and I think the Act would be very much improved if something of that kind could be provided.

Hon. Mr. BEIQUE: Could you give us the amendment?

Mr. STAIRS: Yes, sir, I think we could undertake to do that.

Hon. Mr. WEBSTER: Would there not be a conflict with the provincial legislation? In Quebec par-value stock is issued at $5 a share. You suggest a different method, if I understand you.

Mr. STAIRS: No, the province of Quebec simply says that you must state the amount of capital with which you will carry on business, which shall be $5 a share or a multiple of $5 a share. That is the old provision that used to be in the Dominion Act. Now, that does not fix the consideration for which you may issue your shares. You may have 100,000 shares of no-par-value and issue them to a man in consideration of the transfer of a company worth $10,000,000. But under the Quebec Act you may have a statement in your letters patent that you would carry on business with $500,000 capital. I do not hold up the Quebec Act as a scientific and good model in regard to the provisions as to no-par-value shares.

Hon. Mr. WEBSTER: It has been very satisfactory so far.

Mr. STAIRS: It may have been, but I think if you will examine them you will find they are not very scientific. Perhaps this would be a convenient place to mention a verbal correction in section 27 of the Bill so that it will not escape notice. It inserts new clause 108A, and in the fourth line I think the word "passed" is a typographical error for the word "cast", and it reads "sanctioned by at least two-thirds of the votes passed at a special general meeting." It is a mere matter of words. Everywhere throughout the Act the word "cast" is used, and I think this section should read "cast" uniformly with the other provisions of the principal Act. Then I think in subsection 2 there is a similar improvement necessary. Here it talks of the votes of two-thirds of the shareholders being "cast", and I think it should refer to two-thirds of the votes.

My only other suggestion is for an amendment in clauses 29 and 30 of the Bill. Clause 29 provides for the insertion of a new section enabling a company to establish branch registers at such times and subject to such conditions as the Secretary of State may decide. That was probably intended to mean at such places, but I do not know. However, I think there should be a more radical amendment. I think it would be not wise that this matter of transfers should be left to be dealt with in the department. I think it would be an embarrassment rather than a help. My suggestions are embodied in a draft suggestion for the amendment of clauses 29 and 30. This involves the transfer of what is now in section 119, describing how books shall be open for inspection, to a position as subsection 2 of section 117, immediately after the books to which it really refers; then repealing sections 118 and 119, and really consolidating the old section 118 and the new section 117A (section 29 of the Bill) into a new section 118 of the Act dealing comprehensively both with that principal register and with branch share registers.

Then I suggest that 119A as in the Bill have a new number, as I have set free the old number of the Bill by my suggestion, and it enables 119A to be called 119. That is the whole suggestion.

29. The principal Act is hereby amended by adding to Section 117 the following subsection:—

(2) Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open, at the chief place of business of the company, for the inspection of shareholders and creditors of the company, and their personal representatives, and of any judgment creditor of a shareholder, any of whom may make extracts therefrom.

30. Sections 118 and 119 of the principal Act are hereby repealed and the following substituted therefor:—

118. A register of transfers shall be provided in which shall be entered the particulars of every transfer of shares in the capital of the company.

(2) The register of transfers shall be kept by the secretary or by such other officer or officers as may be specially charged with that duty or by such other agent or agents as may from time to time be appointed for the purpose by the company.

(3) Unless otherwise provided in the letters patent or by-laws of the company, the register of transfers may be kept at the chief place of business of the company or at such other office or place as may from time to time be appointed by the directors, and one or more branch registers of transfers may be kept at such office or offices of the company or other place or places as may from time to time be appointed by the directors.

(4) Unless the register of transfers is kept at the chief place of business of the company a book or books shall be kept at such chief place of business of the company in which shall be entered a copy of the particulars of every transfer of shares in the capital of the company, but entry of the particulars of the transfer of shares in the capital of the company in a register or branch register of transfers kept elsewhere than at such chief place of business of the company shall for all purposes of this Part be a complete and valid transfer.

(5) Such books during reasonable business hours of every day except Sundays and holidays shall, at the places where they are respectively authorized by this section to be kept, be open for the inspection of shareholders and creditors of the company and their personal representatives and of any judgment creditor of a shareholder, any of whom may make extracts therefrom.

119. Every company shall cause to be kept proper books of account with respect to—

(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

(*b*) all sales and purchases of goods by the company;

(*c*) the assets and liabilities of the company.

(2) The books of account shall be kept at the chief place of business of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

(3) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company,

and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months. (Continue with balance of Section 119A as in Bill.)

I might just outline the gist of the suggestion. It is simply made on account of the almost universal practice, particularly in large companies, and always in the case of companies whose issues are listed, to have their shares transferred by transfer agents, and to have registrars. It is very desirable that that practice should be legalized. At present our law requires all share registers to be kept at the head office of the company, and I doubt very much whether there is one of the large companies operating in conformity with the Act.

Another thing is, it is absolutely necessary to have power to have more than one register, because the stock exchanges invariably require that it shall be possible to transfer shares in the same place at which the stock exchange is situated. In other words, if you have shares listed on the Montreal Exchange, you must have shares transferred in Montreal. Your company may have its head office in British Columbia, but it does not matter; you must have a transfer register in Montreal. The same thing applies to Toronto and New York, and probably London, too, although I am not sure that there is an absolute requirement in that regard.

Hon. Mr. McMEANS: Does it not go further than that? If you have branch transfer offices in the different provinces, and you happen to own some of the stock in the head office in Toronto, and there is no office in Winnipeg, you would have to pay double death duties.

Mr. STAIRS: Possibly so; you cannot absolutely prevent that; but so far as the situation of the stock is concerned, apart from the domicile of the owner, I think this will enable shares to be localized at one place. Some of the provinces apply the rule, *mobilia sequuntur personam*. In other words, they tax the property of a deceased person no matter where it may be; and in that case, if a man resides in British Columbia, and has shares in a Quebec company registered in Quebec, he will have to argue it with Quebec, and possibly there will be double taxation.

Hon. Mr. McMEANS: There would be a taxation in British Columbia, and another in Quebec.

Mr. STAIRS: We cannot prevent that.

Hon. Mr. McMEANS: If you had a transfer office in British Columbia he would only pay one death duty.

Mr. STAIRS: I think it is impossible to legislate in such a way as to imitate a bank. You can go this far, that you can provide means to enable a company to establish what registers the company must have, under all the exigencies of its business, and stock exchange requirements, and things like that. But I think it would be impracticable to provide that a Dominion company would have to maintain a share register in each province.

Hon. Mr. McMEANS: I quite agree.

Mr. STAIRS: I have considered the thing fairly carefully, and I did not want to trouble the Committee with much detail or argument about it, particularly with going into this succession duty question, which is a very complicated and troublesome one.

The CHAIRMAN: Have you these last amendments ready?

Mr. STAIRS: Yes, I have them ready, and that is all I want to develop. If any of you gentlemen want to ask me any questions I would be glad to answer them; otherwise I am through.

Hon. Mr. McMEANS: I would like to ask you on one little matter. I understand you to say that it would be better to practically eliminate from the Act the prospectus and statement, and depend on the legislation of the different provinces for protection.

Mr. STAIRS: Perhaps I did not make myself clear. I think it would be best to eliminate from the Act the requirements of the New Bill in so far as they require persons who sell shares commercially, for their own account, to offer prospectus and give all this information to prospective clients. But that is a very different thing from the situation where a company itself is offering its shares to the public as they do in England. There may be a case for leaving the prospectus requirement applicable, though I think there should be some amendment and slight improvements made in the sections themselves. That, again, is a different question from the filing question. There are three cases. One is the investment banker, who sells for his own account. He should not be asked to comply with those prospectus requirements at all; he should be left to be dealt with by the province.

Hon. Mr. TESSIER: He should not be asked.

Mr. STAIRS: He should not be asked; he should be left to be dealt with like a butcher or a baker.

Hon. Mr. BEAUBIEN: He has paid out his own money.

Mr. STAIRS: He has paid out his own money for his securities, and he sells them just as a man sells cheese, and I should leave the province to deal with him. The next case is the case of the company offering its own securities. Then we have another question—whether it is sufficient that they should file information, or whether they must also be required to deliver copies of the information filed to everybody to whom they offer the stock by public advertisement, incorporate it in full in the advertisement, or send a copy of this information filed with every letter, if they send a letter, or with every telegram they send.

Hon. Mr. McMEANS: This applies to all companies?

Mr. STAIRS: If the amendments are adopted it will require that every company which offers its own shares shall give everybody, or give the public, notice, with all the information that the prospectus section required.

Hon. Mr. TESSIER: That is what they do generally.

Mr. STAIRS: They never in this country do it.

Hon. Mr. TESSIER: They announce their shares?

Mr. STAIRS: But they never do it.

Hon. Mr. McLENNAN: Every morning there are announcements.

Mr. STAIRS: Yes, but they do not give you a copy of their charter powers.

Hon. Mr. McLENNAN: But reputable houses will give it to you. As a protection for the investing public, particularly, you have the reputability of the security company.

Mr. STAIRS: I think the respectability of the investment banking houses in Canada is the protection that the public now has. These prospectus requirements will not give you any protection against the unscrupulous fellow, and substantially I should say that the investment bankers' circular now contains really all the information that anybody can reasonably require, and a good deal more than the Act requires; but they omit some specific items that the Act does require.

Hon. Mr. McMEANS: That is, what they pay for the property, and what they are offering it at?

Mr. STAIRS: That is not made public, but no doubt if you or anyone else said, "I will not buy these shares unless you tell me what you did pay," they

will say, "Come down to our office, and we will show you." You can get the information if you take the trouble to go to Mr. Mulvey's office and look at the Company's statement in lieu of prospectus. There are two things; if you do not issue a prospectus which contains all the matter that the Act requires you must file with the Department similar information so that anybody who knows the Companies Act, and knows that this is required, can get the information by going to the Department, seeing the names and dates and particulars of every material contract, seeing the statement of the interest of directors, and all that sort of thing, and then simply going to the place where they are open for inspection, if he takes enough interest in it. If you are sitting at your desk and a man asks you to buy a bond or 15 or 20 bonds, you are not going to do that, but you may write to your agent at Ottawa, or come up to Ottawa if you are willing to take that trouble to get it; but it is all there if you want it.

Hon. Mr. McMEANS: You do not propose to alter that?

Mr. STAIRS: No, I would not advise dispensing with the filing requirements —with the requirement for filing information—but I would advise dispensing with information to be given to everybody broadcast, whether they want it or not.

Hon. Mr. BEAUBIEN: I understand, then, that when a company sends its shares to a banking house, you would pass that company over to the jurisdiction of the province?

Mr. STAIRS: That is practically what I said, subject to this provision, that I would still require that the information still be filed at Ottawa; that the sort of information that they now have to give would still require to be filed, to be available for reference if anybody needs it or wants it, or for the future, or something of that kind. I think it is far more useful to be able to look it up five years afterwards, though you will not get people looking it up as the basis of a purchase. You do occasionally want to look it up afterwards, however.

Hon. Mr. TESSIER: When you have lost your money?

Mr. STAIRS: When you have lost your money.

Hon. Mr. BEAUBIEN: Then the other company, selling directly to the public, would remain under Federal control?

Mr. STAIRS: Yes.

Hon. Mr. BEAUBIEN: What would you exact from them, then?

Mr. STAIRS: Simply to file it.

Hon. Mr. BEAUBIEN: They would do nothing else?

Mr. STAIRS: Nothing else.

Hon. Mr. BEAUBIEN: They could offer their shares without any further information than the banking house would give; is that right?

Mr. STAIRS: Yes, so I suggest possibly revising the thing a little bit, and making it simpler, and easier to comply with.

Hon. Mr. TESSIER: There ought to be some way whereby the public would know that they could get information through the Secretary of State.

Hon. Mr. McMEANS: What I want to get at is that the legislation in effect in the different provinces is no protection to the public. This is a Dominion Act. Now, all they can do is to pass legislation to the effect that anybody selling these shares shall take out a license.

Mr. STAIRS: I would like to submit that, in practice, the provincial legislation such as was described by Mr. Long as in force in Ontario and the western provinces, and such as was introduced by Premier Taschereau in Quebec last session, but not passed—though I think it very soon will be—is a protection, for the simple reason that in the commercial companies organized under the

Dominion Act it is so unusual to have a public offering by the company that I think we can really afford to disregard it. Of course that is not true in the case of insurance companies, banks, and other institutions, but in all my experience I have only known one case of a public offering by a company on a prospectus.

Hon. Mr. BEAUBIEN: Would not your suggestion make those companies that would remain under the Federal control really freer than those that would be passed over to the provincial control?

Mr. STAIRS: Well, as I say, practically I think they would.

Hon. Mr. BEAUBIEN: It is the reverse operation to-day, so much so that no company sells its own shares; it is not practical.

Mr. STAIRS: It is not practical. Of course I do not think they ever will sell their own shares. Under our method of doing business no company can afford to establish a sales department for shares. It is a different thing with the underwriting system in England, where all you have to do is to go to an underwriting company and say, "We want to offer so much; you underwrite it," and they do it by advertising, and the money comes in practically to the company's banker, and the underwriter gets an overriding commission of two, three, four or five points, and the company gets its money. It is a very different thing from attempting to peddle.

Hon. Mr. TESSIER: How about new shares?

Mr. STAIRS: That is the way they do it. It is a very different thing to peddle $5,000,000 of shares all over this country. We cannot do it, and we go to specialists such as our friend Ames & Co. or anybody at all, and say, "Here, you have an organization; you buy these shares, and pay for them." They arrange a bank credit, and do pay for them, and then they sell them.

Hon. Mr. McMEANS: Is the practice that they are always sold to the investment houses?

Mr. STAIRS: Almost always. In the big commercial companies, certainly. With some of those newer companies they sell them to the public or take them on an agency basis.

The CHAIRMAN: Will you please file your proposed amendments with the clerk.

Mr. FRANK B. COMMON, K.C., appeared before the Committee, and said:—

I represent the eastern division of the Canadian Investment Bankers' Association, and I am also putting forward the views of my firm, Messrs. Brown, Montgomery & McMichael, Montreal, as suggested by our experience in dealing with the incorporation of companies as to what we think the effect of these amendments would be. I wish, in the first place, to concur generally in what has been said by my confreres, Mr. Long and Mr. Stairs. I am not going to traverse this ground again and repeat what has already been said. I wish, however, to emphasize one point dealt with briefly by Mr. Stairs, and would suggest that we insert an amendment authorizing the issue of no-par-value shares at a premium; with two objects—one, of which was mentioned by Mr. Stairs. When an old company has been operating for many years with a long-continued dividend payment policy, it may, for varying circumstances, find it necessary to obtain a new charter and go under a new legal entity, as it were. But it is the same institution, and it is the same earnings and the same funds that are going to be available for the payment of dividends, and it is very undesirable that that dividend policy should have to be interrupted. It might be that that reorganization might be completed within ten days before the next quarterly dividend might become due. In that case the new company might

not have been able in that ten days to earn sufficient profit to pay the dividend for the whole quarter. This is one of the reasons why I think there should be inserted a clause permitting a premium on no-par-value shares, which premium would be available for continuing the dividend payment policy.

Another reason is that under present practice, where so-called investment trusts—I would prefer to call them investment companies—are being formed, the investment bankers who offer those securities desire that these companies should be able validly to declare a dividend on the preferred stock at the end of the first quarter should there be available sufficient moneys to do so. They in many cases ask whether it is legal under Canadian law to pay a premium on account of no-par-value shares, in order that that premium may be available to pay the first dividend on the preferred. We have been compelled to advise them that it is doubtful. In some cases they have resorted to subterfuge, which is undesirable, in order to do this, and I think that it is our duty to make the law specific on that point.

Hon. Mr. BEIQUE: I fail to see anything in the Act which would prevent any company from issuing stock of no par value.

Mr. COMMON: There is a provision that the amount of capital with which a company shall carry on business shall not be less than the aggregate amount of the consideration for the issue and allotment of shares without par value, plus an amount equal to the total par value of all other issued and outstanding shares of the capital stock of the company.

Hon. Mr. BEIQUE: By the amendment?

Mr. COMMON: Exactly. My second suggestion would be that there be a specific authorization under the Act to permit of the declaration of stock dividends. Stock dividends are a recognized feature of corporate operation and capital readjustment. Our Act at the present time makes no reference to stock dividends. It has been the practice of the Department to permit of the insertion in letters patent of express permission to pay stock dividends. However, if we apply the principle that the Department may not insert in the letters patent anything that is not permitted by the Act, there remains the legal question as to whether the Act as drafted legally authorizes that insert. In order to clear up doubt on this question, I would suggest that there be express authority granted by the Act to pay stock dividends. When we are dealing with large sums of money and large industrial units, as we are at the present time, we cannot afford to have questions of this kind in an uncertain condition.

I may say that in conferring—this is going to bring me into another point—in conferring with international counsel, in the realm of international finance, counsel in London, in New York, and in various European countries, we find that on inquiring where they will incorporate certain companies they inquire as to what is necessary to be done in various countries to bring them under the law. On this point we have to give an opinion supported by reasoning. If, however, we could definitely quote to them the Act, it would be advantageous in attracting capital to Canada. So I would suggest the insertion of express permission to declare stock dividends.

I am not going to add anything to the discussion of the different points mentioned by Mr. Long and Mr. Stairs in respect of prospectuses, but I would like to bring out another phase of that question; and that phase is that companies are the instruments by which Canadians are able to attract money to Canada, and to invest their own savings in the development of Canadian industry. It is therefore to the interest of Canada that there shall not be unnecessary restrictions which will impede the getting of this money. When our investment bankers get the money they do not get it all in Canada; they go in part

to London and New York. Canadian securities have been coming back into popularity in England, we are very glad to say. But in England the investment banking system is conducted on different lines from our own. Over there they put a circular in the paper and sit down and wait for subscriptions to come in; but in our country we have to have well trained salesmen of a high class to go out and offer the securities, and in some cases these salesmen have to travel hundreds of miles in order to see one client. It is an expensive method, and if we were to publish in the London papers a statement disclosing the discount which fairly and reasonably is paid Canadian investment bankers, and alongside that if there were published a circular of an English company, with its much smaller expenses, can you imagine the comparison that would be made in the mind of the English investor? He does not know of the circumstances under which we work here. As we are doing our financing under different circumstances to those which exist in England, the requirements that suit England do not suit Canada. We must take these differences into consideration. Our investment bankers are drawing this money now from all the financial centres of the world, and we must help them to get it from all those places, and to present the case of Canada, the need for investment here and the opportunities for sound investment in Canada. In getting investors from those countries they should not be subjected to unnecessary impediments; we must let them have all the advantages and freedom that those other countries offer.

Now, why should our investment bankers selling securities in New York—which is not only an American centre of investment, but is the centre of large amounts of money from all parts of the investing world—why should we in going to New York for American money and foreign money, be obliged to use circulars and things of that character that include restrictions to which American investment bankers are not subject? These are some of the things which appeal to me as matters which we should keep before us in considering this question.

As to the whole question of prospectuses, I submit to you, gentlemen, that this legislation is not going to protect the investor, because you cannot protect a man who will not be protected. In the practice of my firm I have never heard of a Blue Sky return being referred to by a prospective purchaser of securities. These gentlemen who are here are here because they have a large practice in the realm of corporation finance, and they have been doing that work for many years. I have asked them how many cases they could remember in their experience where their firms have been called upon to defend an action for misrepresentation in a circular, or improper concealment in a circular, and there was not one case of this kind which they could recall in regard to a public issue. There was one case that one of these firms had had, but not one in regard to a public issue, the realm that we are now considering, in the experience of all those gentlemen. I submit that that indicates that the people who are doing the constructive financing in Canada, are not people against whom such restrictions are required. Such restrictions are required only with people who do not carry on business on proper principles. I repeat what was said by one of the former gentlemen, that I think it would be a very conservative estimate to say that 90 per cent of the financing is done by first rate houses. It seems to me to be very inadvisable to subject these people, who are doing the constructive work, to restrictions which are designed to prevent criminal practice by some irresponsible promoters whose contribution to the development of Canada is probably absolutely negligible in amount. I say, therefore, let us not put on restrictions that are going to impede financing that has as its purpose the development of Canada, in order to get at some people who are carrying on business in an improper way and who are so small that they cannot affect the

larger operations. I say that these people are subject, in the first place, to the Blue Sky laws of the different provinces; and in the second place, if they are Dominion companies, they must by a statement in lieu of prospectus put the information on record with the Secretary of State where it is available to anybody who wishes to refer to it. Further, in case of misrepresentation they are subject to action for recovery through the civil courts, and in addition they are subject to criminal law for any moneys fraudulently obtained. With all this protection, if a man has not sufficient judgment to invest his money, and if that protection is not enough for him, I submit that he can never be protected by any law which can be enacted, and that in endeavouring to protect him we should not go so far as to restrict constructive development of the country.

The CHAIRMAN: Have you an amendment that you want to submit?

Mr. COMMON: I would be pleased to prepare it. I have not drafted it yet, but when I have it ready I will leave it with the Secretary.

The CHAIRMAN: I think Mr. Hugessen has something to say to the Committee.

Hon. A. K. HUGESSEN, K.C.: I won't detain the Committee for any considerable time. I represent the firm of Lafleur, MacDougall, Macfarlane & Barclay, which acts for a number of clients in connection with corporate financing.

I wish in the first place to associate myself with what the gentlemen preceding me have said in regard to proposed amendments of the Act as to prospectuses. As they have dealt amply with the subject, there is nothing further that remains for me to say about it.

I also wish to support the suggestion made by Mr. Common, that a specific section should be inserted in the Act permitting companies to declare stock dividends, and for the same reasons which Mr. Common has already advanced. In that connection I may say that we in Quebec are not so slow, as we have a most adequate section in our provincial Act permitting companies incorporated under that Act to declare stock dividends. If we could have inserted in the Dominion Act something similar to the corresponding section of the Quebec Act, the improvement would be very considerable.

In relation to section 18 of the Bill, this repeats practically word for word the provisions presently contained in section 52 of the Act, which states that a company shall not allot any of its shares or debentures unless a prospectus or a statement in lieu of prospectus has been filed with the Department at Ottawa. As the Act now stands there is no provision for remedying any defect, if a company through inadvertence or negligence has failed to file a prospectus or statement in lieu of prospectus. As the Act stands at present it is absolutely prohibitive, and it means that everything done by the company after the omission to file the prospectus or statement, is illegal. I see that in section 16 of the Bill an attempt is made to remedy that, in the case of failure to file a prospectus, by providing that a Judge of the Superior Court of the province in which the company has its head office may, if the company applies and shows that it failed by inadvertence to file a prospectus and that nobody has been injured thereby, make an order that the time for filing be extended, and rectify the situation in any other way he thinks advisable. But I would point out to the Committee that the proposed section 50A does not remedy the situation where the company has failed to file a statement in lieu of a prospectus, instead of a prospectus. I think that section should be enlarged to take care of the case where a company has failed to file a statement in lieu of a prospectus. I feel that an amendment is in order, and, if the Committee permits, I will file with the Clerk the amendment I suggest.

One other matter to which I wish to refer is section 20 of the Bill, page 15, section 56C, by which it is proposed to have redeemable preference stocks. That question has been dealt with to some extent by Mr. Long, but I do wish to impress upon the Committee that the opinion of the counsel with whom I am associated is that we already have in the Act as it now stands all the powers that we require for the redemption of preferred stock. This proposed new section is taken from the English Act of 1928, which imports a new procedure in England, where it slightly widens the powers of companies. But if you bring it into our Act it restricts the powers that we now have. It is inapplicable, I submit, to our practice. In the first place it only permits preferred shares to be redeemed out of profits or out of the proceeds of a fresh issue of shares. As Mr. Long has pointed out, a company may wish to redeem preferred stock with the proceeds of the sale of a capital asset. It might quite conceivably wish to redeem preferred stock with an issue of bonds bearing a lower rate of interest. Both these things would be prohibited if this section were passed. I therefore submit that this section unnecessarily restricts the powers which companies already have and have had for many years under our Companies Act.

If there is any question that any member of the Committee would like to ask me, I shall be very pleased to answer to the best of my ability.

The CHAIRMAN: You will submit a memorandum of your proposed amendment?

Mr. HUGESSEN: Yes.

Mr. P. F. CASGRAIN, M.P.: In respect to the section which authorizes a Judge of the Superior Court in the Province where a Company has it head office to rectify the omission to file a prospectus, in certain cases, I do not know what might be the view of the Committee in regard to this and it might be well if Mr. Long would explain his opinion on this matter. It seems to be a departure from a long established practice. In the past all such matters have been left to the officials of the Department of the Secretary of State.

The CHAIRMAN: Do you desire to hear this matter explained now, or shall we postpone it until we take up the Bill section by section?

Mr. P. F. CASGRAIN, M.P.: I am just drawing the attention of the Committee to this matter, and when the Committee is going to take up the Bill later on we might have it discussed then.

The CHAIRMAN: I think that is the better way.

Mr. P. F. CASGRAIN, M.P.: I thank you very much, Mr. Chairman and honourable members of the Committee, for listening to the financial representatives and Counsel.

Hon. Mr. DANDURAND: I would suggest that the proceedings of this Committee be printed and distributed, and that the amendments which have been brought to the table and those that have been promised be incorporated in the report. I feel that we should have another meeting, and at that time we shall have the new Bill before us governing investment trust companies. Unfortunately that Bill may not be ready for distribution until early next week, so that I suggest we adjourn tentatively to the 1st or 2nd of May. I say tentatively, because the Chairman may fix another date if it does not suit the convenience of the Senate.

I would ask all who are here to give their names to the Clerk so that copies of the discussion of to-day may be sent to them, as well as the Bill which will be submitted to the Senate shortly, so that they may be able to consider the new Bill before the next meeting.

Hon. Mr. BEIQUE: Reference has been made to the requirements of several provinces as to prospectuses. Would it not be advisable to have drawn up for members of the Committee a statement showing the requirements of the respective provinces, so that we shall have to go into the various provincial laws. Of course, the Counsel can get this information for themselves.

The CHAIRMAN: I think Mr. Mulvey is prepared to have such a statement drawn up, and circulated to the members of the Committee before the next meeting.

Mr. MULVEY: Yes.

The Committee adjourned at the call of the Chair.

PROPOSED AMENDMENTS TO BILL (C), AN ACT TO AMEND THE COMPANIES ACT.

No. 1.

SUBMITTED BY MR. E. G. LONG, K.C.

Suggested Amendments to Remove Conditions Precedent on Commencing Business.

Strike out sub-section 8 of Section 9 as embodied in Section 6 of Bill "C".

Insert in clause 9 of the Bill after the words "twenty-one" the words "and twenty-eight".

No. 2.

SUBMITTED BY MR. E. G. LONG, K.C.

Suggested amendments regarding Prospectuses for the purpose of eliminating the provisions relating to a public Prospectus and limiting the same to filing what is now designated "A Statement in Lieu of Prospectus", but which if the Prospectus Sections are eliminated, could itself be termed a "Prospectus".

Eliminate from Bill "C" Sections 15, 16, 17 and 18, and substitute in lieu thereof the following:—

"Sections 49, 50 and 51 of the principal Act are hereby repealed."

"Section 52 of the principal Act is hereby repealed and the following is substituted therefor:—

"52. (1) A Company upon the issue and allotment or sale of any shares or debentures other than an issue and allotment or sale in respect of which a Prospectus has already been filed, shall forthwith file with the Secretary of State a Prospectus in the form and containing the particulars set out in Form F in the schedule to this Act, signed by every person who is named therein as a Director or a proposed Director of the Company or by his agent authorized in writing.

"(2) This section shall not apply to a private company or to a company which has allotted any shares or debentures before the 1st day of January, 1929.

"(3) This section shall not apply to the issue and allotment or sale of shares or debentures to existing Shareholders or Debentureholders of a Company whether with or without the right to renounce in favour of other persons, but, subject as aforesaid, shall apply to every other issue and allotment or sale of shares or debentures.

"(4) Upon default in the filing of any such Prospectus for a period of more than ten days, each Director and every person acting as a representative in Canada of the Company in relation to any such issue and allotment or sale of shares or debentures, shall be liable upon summary conviction to a penalty of $20 for each day of such default, and in default of payment thereof to imprisonment for a term not exceeding three months."

"Section 40 of the principal Act is hereby amended by striking out the words 'Statement in Lieu of' in the 6th line of the said Section."

The first clause of sub-section (2) of Section 103 as embodied in Section 26 of the Bill should read as follows:—

"(2) A Person shall not be named as a Director or proposed Director of a Company in any Prospectus filed by the Company unless before the filing of the Prospectus he has by himself or his agent authorized in writing".

In new form F to Bill "C" strike out the words "Statement in Lieu of" in the first line of the heading, and strike out the note at the end of the form on page 29 of the Bill.

NOTE.—It may be necessary to correct the references to Section numbers in sub-section 6 of Section 8 and sub-section 1 of Section 153 of the principal Act and Section 39 of the Bill to harmonize any new numbering of the Sections occasioned through the amendments in the Bill.

No. 3.

SUBMITTED BY MR. E. G. LONG, K.C.

Re Redemption of Preference Shares

Eliminate from Section 56 (*c*), embodied in Section 20 of the Bill, subsection (1), and in lieu of subsection (3) of Section 56 (*c*) insert the following:—

"The redemption of Preference Shares may be effected on such terms and in such manner as may be provided by the By-laws of the Company or if the Preference Shares were created by Letters Patent or Supplementary Letters Patent, subject to the provisions of such Letters Patent or Supplementary Letters Patent; and subsection 6 of Section 56 shall not apply to any By-law which creates or attempts to create redeemable or convertible Preference Shares."

NOTE:—The foregoing clause is intended to make clear that where redeemable or convertible Preference Shares are lawfully created, either by By-law or Letters Patent, redemption or conversion may take place without the necessity of taking proceedings by way of reduction of capital.

No. 4

SUBMITTED BY MR. E. G. LONG, K.C.

Re Accounts

Eliminate from subsection (4) of Section 119 (*a*) as embodied in Section 30 of the Bill, all of such subsection following the words "the Company's affairs" in the 7th line of such subsection 4.

No. 5

SUBMITTED BY MR. E. G. LONG, K.C.

Re Information as to Mortgages, Charges, etc.

Strike out subsection 8 of Section 85 as embodied in Section 24 of the Act, and substitute the following:—

"The Company shall cause to be endorsed on every debenture or certificate of debenture stock which is issued by the Company and the payment of which is secured by the mortgage or charge so registered, a

memorandum or statement that such mortgage or charge has been registered pursuant to this Act, but nothing in this subsection shall be construed as requiring a Company to cause such memorandum of registration of any mortgage or charge so given to be endorsed or any debenture or certificate of debenture stock which has been issued by the Company before the mortgage or charge was created."

"Subsection 3 of Section 91 of the principal Act is hereby amended by striking out the words 'a copy of the Certificate' in the 5th line of said subsection and substituting in lieu thereof the words 'a memorandum or statement'".

No. 6

(See also Revised Amendment No. 8)

SUBMITTED BY MR. G. S. STAIRS, K.C.

Amendment to Section 6 of Bill, Subsection (4) of Section 9 of Principal Act

For subsection (4) of Section 9 of the principal Act, as repealed and substituted by Section 6 of the Bill, substitute the following:—

"(4) *In the absence of other provisions in that behalf in the Letters Patent, Supplementary Letters Patent or By-laws of the Company,* the issue and allotment of shares *without nominal or par value* authorized by this section may be made from time to time for such consideration as may be *fixed by the Board of Directors of the Company.*"

No. 7

(See also Revised Amendment No. 9)

SUBMITTED BY MR. G. S. STAIRS, K.C.

Amendment to Section 6 of Bill, Subsection (6) of Section 9 of Principal Act

"(6) The amount of capital with which the company shall carry on business shall not be less than the aggregate amount of the consideration for the issue and allotment of the shares without nominal or par value from time to time outstanding, and in addition thereto an amount equal to the total nominal amount of all other issued and outstanding shares of the capital stock of the company issued as fully paid and the total amount for the time being paid up on such other shares of the capital stock of the company as are issued and outstanding otherwise than fully paid."

No. 8

(Revised Amendment No. 6)

SUBMITTED BY MR. G. S. STAIRS, K.C.

Amendment to Subsection 5 of Section 6 of Bill

(Subsection (5) of section 9 of Principal Act)

Including Suggestion for Method or Permitting Establishment of Surplus on Issue of No Par Stock

For subsection five of section nine of the principal Act as repealed and substituted by section five of the Bill substitute the following:—

"(5) Any and all shares issued as permitted by this section shall be deemed fully paid and non-assessable *on receipt by the company of the consideration for the issue and allotment of such shares fixed in accordance with the provisions of subsection (4) of this section,* and the holder of such shares shall not be liable to the company or to its creditors in respect thereof."

No. 9

(Revising Amendment No. 7)

SUBMITTED BY MR. G. S. STAIRS, K.C.

Amendment to Subsection 6 of Section 6 of Bill

(Subsection (6) of section 9 of Principal Act)

Including suggestion for method or permitting establishment of surplus on issue of no par stock

For subsection (6) of section nine of the principal Act as repealed and substituted by section six of the Bill substitute the following:—

"(6) The amount of capital with which the company shall carry on business shall be not less than the aggregate amount of the par value of outstanding fully paid par value shares, if any, or of any less amount paid up on par value shares, together with the amount of the consideration received upon the issue and allotment of the shares without nominal or par value from time to time outstanding, or such portion of such consideration as shall on or before the issue and allotment of any such shares without nominal or par value from time to time be declared to be capital in accordance with any provisions in that behalf in the letters patent, supplementary letters patent, or by-laws of the company, or, in the absence of any such provisions, as shall be so declared by the directors, and any balance of the consideration so received over and above the portion thereof declared to be capital in accordance with the provisions of this subsection shall be distributable surplus."

No. 10

SUBMITTED BY MR. G. S. STAIRS, K.C.

Amendments to Sections 29 and 30

29. The principal Act is hereby amended by adding to section 117 the following subsection:—

"(2) Such books shall, during reasonable business hours of every day, except Sundays and holidays, be kept open, at the chief place of business of the company, for the inspection of shareholders and creditors of the company, and their personal representatives, and of any judgment creditor of a shareholder, any of whom may make extracts therefrom."

30. Sections 118 and 119 of the principal Act are hereby repealed and the following substituted therefor:—

"118. A register of transfers shall be provided in which shall be entered the particulars of every transfer of shares in the capital of the company.

"(2) The register of transfers shall be kept by the secretary or by such other officer or officers as may be specially charged with that duty or by such other agent or agents as may from time to time be appointed for the purpose by the Company.

"(3) Unless otherwise provided in the letters patent or by-laws of the company the register of transfers may be kept at the chief place of business of the company or at such other office or place as may from time to time be appointed by the directors, and one or more branch regis-

ters of transfers may be kept at such office or offices of the company or other place or places as may from time to time be appointed by the directors.

"(4) Unless the register of transfers is kept at the chief place of business of the company a book or books shall be kept at such chief place of business of the company in which shall be entered a copy of the particulars of every transfer of shares in the capital of the company, but entry of the particulars of the transfer of shares in the capital of the company in a register or branch register of transfers kept elsewhere than at such chief place of business of the company shall for all purposes of this Part be a complete and valid transfer.

"(5) Such books during reasonable business hours of every day except Sundays and holidays shall, at the places where they are respectively authorized by this section to be kept, be open for the inspection of shareholders and creditors of the company and their personal representatives and of any judgment creditor of a shareholder, any of whom may make extracts therefrom."

"119. Every company shall cause to be kept proper books of account with respect to—

"(*a*) all sums of money received and expended by the company and the matters in respect of which the receipt and expenditure take place;

"(*b*) all sales and purchases of goods by the company;

"(*c*) the assets and liabilities of the company.

"(2) The books of account shall be kept at the chief place of business of the company or at such other place as the directors think fit, and shall at all times be open to inspection by the directors.

"(3) The directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account or, in the case of a company not trading for profit, an income and expenditure account for the period, in the case of the first account, since the incorporation of the company, and, in any other case, since the preceding account, made up to a date not earlier than the date of the meeting by more than nine months, or, in the case of a company carrying on business or having interests abroad, by more than twelve months;

(Continue as in 119A of the Bill.)

No. 11

SUBMITTED BY HON. A. K. HUGESSEN

Amendment to Section 16 of the Bill

For Section 50A, as enacted by Section 16 of the Bill, substitute the following:—

"50A. The Secretary of State, on being satisfied that the omission to file either a prospectus or a statement in lieu of prospectus as required by this Act, or that the omission or mis-statement of any particular prescribed to be contained in such prospectus or statement in lieu of prospectus, was accidental, or due to inadvertence, or some other sufficient

cause, or is not of a nature to prejudice the position of subscribers to any issue of shares or securities referred to in such prospectus or statement in lieu of prospectus, or that on other grounds it is just and equitable to grant relief, may, on the application of the company or of any person interested, and on such terms and conditions as may seem to him just and expedient, order that the time for filing be extended, or as the case may be, so that the omission or mis-statement may be rectified."

No. 12

SUBMITTED BY MR. FRANK B. COMMON, K.C.

Proposed Amendment to Confer Statutory Authority for Payment of Stock Dividends

"The directors may provide for the amount of any dividend that they may lawfully declare shall be paid, in whole or in part, in capital stock of the company and for that purpose they may authorize the issue of shares of the company as fully paid or partly paid, or may credit the amount of such dividend on the shares of the company already issued but not fully paid, and, in the latter case, the liability of the holders of such shares shall be reduced by the amount of such dividend."

THE SENATE OF CANADA

PROCEEDINGS OF

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

ON

BILL (C), AN ACT TO AMEND THE COMPANIES ACT

AND

BILL (V3), AN ACT RESPECTING INVESTMENT COMPANIES

No. 3

The Hon. F. B. BLACK, Chairman

WITNESSES:

Mr. F. W. Wegenast, Toronto, Ontario.
Mr. E. G. Long, K.C., Toronto, Ontario.
Mr. Britton Osler, K.C., Toronto, Ontario.
Rt. Hon. Arthur Meighen, P.C., K.C., Toronto, Ontario.
Mr. G. S. Stairs, K.C., Montreal, P.Q.
Hon. Adrian K. Hugessen, K.C., Montreal, P.Q.
Mr. A. W. Roebuck, Toronto, Ontario.
Mr. Frank B. Common, K.C., Montreal, P.Q.
Mr. John Appleton, Secretary, Dominion Mortgage & Investments Association, Toronto, Ontario.
Mr. G. G. Hyde, K.C., Montreal, P.Q.
Mr. G. D. Finlayson, Superintendent of Insurance, Ottawa, Ontario.

OTTAWA
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PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1929

THE SENATE

STANDING COMMITTEE

ON

Banking and Commerce

1929

THE HON. F. B. BLACK, *Chairman*

Hon. Sir Allen Aylesworth, K.C.M.G., P.C., K.C.
Hon. C. P. Beaubien, K.C.
Hon. F. L. Beique, P.C., K.C.
Hon. N. A. Belcourt, P.C.
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Hon. J. G. Turiff
Hon. L. C. Webster
Hon. R. S. White
Hon. W. B. Willoughby, K.C.

84907—1½

ORDERS OF REFERENCE

EXTRACT *from the Minutes of Proceedings of The Senate of Canada, 15th February, 1929*

Pursuant to the Order of the Day, the Bill (C), intituled: "An Act to amend the Companies Act," was read the second time, and—

Referred to the Standing Committee on Banking and Commerce.

EXTRACT *from the Minutes of Proceedings of The Senate of Canada, 30th April, 1929*

Pursuant to the Order of the Day, the Bill (V3), intituled: "An Act respecting Investment Companies," was read the second time, and—

Referred to the Standing Committee on Banking and Commerce.

MINUTES OF EVIDENCE

THE SENATE,

THURSDAY, May 2, 1929.

The Standing Committee on Banking and Commerce to whom was referred Bill C, intituled "An Act to amend The Companies Act," met this day at 10.30 a.m., Honourable Mr. Black in the Chair.

The CHAIRMAN: Gentlemen, we are ready to proceed.

Hon. Mr. DANDURAND: I had supposed that all the parties outside had been heard, but I understand they would like to make further representations on the Companies Act amendments.

The CHAIRMAN: There was one gentleman who said this morning he would like to give his opinion. Is he here?

Mr. FRANKLIN W. WEGENAST, Toronto: If the Committee should be curious as to why I should appear before them to make any representations, I am quite prepared to explain, but until the Committee expresses a desire I waive the explanation. There are three points that I would like to refer to. One is the proposal, I think made by Mr. Long, supported by Mr. Stairs, that the provisions respecting prospectus should be modified, and some relief given; that instead of having a prospectus printed in connection with offers of flotations, that the filing of a notice, in lieu of prospectus, with the Under-Secretary of State should be considered sufficient. In connection with that I might call the attention of the Committee to this situation, which I think was not mentioned. It was suggested that the bulk of the stock issues—90 per cent, I think, was said, and I think it is fully that—are made through underwriters or brokers. The reason for that has been that the companies desired to get away from the prospectus provision. Until 1917, when the present prospectus provisions were introduced, the requirements of the prospectus provisions in the Dominion Act were very light, and the practice then was for the company to do its own floating, to sell its own shares. As soon as the prospectus provisions were brought in as in the Ontario Act, as we have them now, that practice changed, and began to follow the practice that had been adopted in Ontario, of evading the prospectus section, by the company, in many cases, simply incorporating a subsidiary company, at a cost of only a few hundred dollars, and this subsidiary company did the floating, acted as a broker or underwriter; or the flotation was farmed out to underwriters or brokers. In that way the prospectus sections were gotten over.

Now, the provincial Acts in Ontario and Saskatchewan and Manitoba have tightened the thing up so that the broker is now amenable to provincial law and to the control of the Attorney General in most of the provinces, under the Security Frauds Provincial Acts. The broker must now take out a license, and satisfy the provincial department that the security he is offering is one that will give the investor a fair run for his money. The proposal now is that the prospectus provisions in the Dominion Act should be dropped.

First I ought to perhaps put my main point, which is this, that the provisions in the provincial Acts, in so far as they purport to control the issue of stock in a Dominion company, are, if I may venture to give my opinion to this Committee, invalid. That is to say, I think the provincial legislature has nothing to do with the conditions and terms, the arrangements under which a Dominion company issues its stock; and I venture to give my opinion—though

it has not been asked—that the provincial attorney general has no power through these provincial Acts to say that the agent, the person whom the Dominion company has selected for the purpose of selling its stock, shall not go ahead and sell it as he is authorized to do by the Dominion company. In other words, if I may say so, I think that the whole matter is a matter for the Dominion; that is, the first issue of the stock. Once the stock has been issued I grant that it becomes personal property and comes under the terms of the Act of the province, which has a right to see how that stock thereafter shall be sold. It then becomes personal property and is a matter of control and dealing with property under the head of property and civil rights, an item of provincial jurisdiction. But my point is that on the original issue of the stock the provincial legislatures have no control, have nothing to say; and that point will very soon be taken if the suggestion is adopted of modifying these prospectus provisions in the way suggested. The point will very soon be taken by promoters, or investment bankers, or whatever you call them, and that they will in that way escape the salutary control which the prospectus sections are intended to impose.

The CHAIRMAN: I think your comments have particular reference to the amendments suggested by Mr. Long, K.C.?

Mr. WEGENAST: Yes; I have no criticism at all to make of what Mr. Long said about the desirability of revising or modifying the requirements. It is a ridiculous thing to spread out the full objects of the company, as some lawyers draft them, on the prospectus; and in other ways the requirements might be modified so as to make them more reasonable. I would fully concur in the suggestion that the abbreviated form of prospectus such as is used in England might be authorized here for certain purposes; but the prospectus provisions are the charter of the man who puts his money in the company; the man who cannot match his brains against the promoter and the high-pressure salesman. The prospectus provisions are his charter, and I entirely dissent from the suggestion that those provisions should be so modified that the investor, the man who has put his money into the stock, will no longer be able to say: "You took my money on false representations, and I do not need to pay for the stock; give me my money back." The suggestion was that it might be in order to substitute penalties of some kind for the infraction of a prospectus provision. I would say, to that, respectfully, no. I say that the principal sanction for those provisions should be that if the man who sells the stock, the promoter, does not live up to those provisions, he knows that the man who has subscribed to the stock can get out of the taking and paying for the stock. So much as to the prospectus provisions.

Now, to comment on the proposal of Mr. Stairs in the proceedings of the Committee for the last day, near the end, page iv. There is a draft section there, the object of which is to allow a surplus to be set up in the case of companies with no-par-value shares. I have no very definite suggestion to make to the Committee, if you will allow me to come before you in that way, but I do suggest that there is enough anomaly and difficulty about the no-par-value sections and their administration to give the Committee pause before adding this one, which is a very serious one.

As I take it, the no-par-value scheme means that instead of the shares having a par value of fixed amount—fixed at the incorporation of the company—the value of the shares is to be elastic, and may vary from year to year, from one balance-sheet to another. The idea is that the investor shall not get the notion that this thing which he buys is $100 or $10, as the case may be, but represents the aliquot part of the assets, the capital, whatever it may be. This is one theory—it is not only a theory, but I mention it because it is perhaps the most popular theory—that the value of the assets is elastic and varies from

year to year with the balance-sheet. In other words, there is not any surplus. The surplus is absorbed every year in the capital. The capital is elastic, and the share is simply an aliquot part of the aggregate amount of capital. Under those conditions I ask, how could there be a surplus, and how could you have any such thing as no-par-value shares issued at a premium? The share is always an aliquot part of that flexible thing which is the capital of the company.

I gant you there are difficulties in working out that theory, but there is less difficulty in that than in any theory you could adopt. I wanted to quote a passage on the difficulty as to the accounting features from what I think is the only standard text-book on the subject, Robbins on "No-par-value Stock", but I found it was not in the library. It was to this effect, that accountants throughout America are at sea as to the way to put no-par-value stock in the balance-sheet. Some accountants put down a nominal value of a dollar, or $5, for the no-par-value stock; others put it—and I think the only logical way—as the amount of the consideration for which the no-par-value shares were issued, plus the amount represented by the preferred stock of the company. Now, the Act says that the company shall carry on business with the amount of capital which the company has as representing the amount of the consideration paid for the no-par-value shares, plus, of course, amount represented by the preferred stock. You start with that; but at the end of the first year's operation the capital of the company has changed, and under the no-par-value system you always pay your dividends out of capital; there is no surplus. What you would have to do, if you adopted this provision, I respectfully suggest, is to strike out the provision altogether which says that the capital with which the company is to carry on business is the amount of the consideration for which the no-par-value stock was issued. Have I made myself clear as to that? You cannot have the two things.

The CHAIRMAN: There is a request by members of the Committee that you should state what interest you represent.

Mr. WEGENAST: Well, it is something like this. It fell to my lot some years ago to have a number of cases in the higher courts which resulted in a very large increase in the turnover of Mr. Mulvey's business here—a large increase in the number of charters taken out by Dominion companies. Since that time I have taken a personal—and you might say almost a fatherly—interest in the Dominion Companies Act. I may say further that I am just completing the manuscript of a book—I am waiting for this Committee to complete its work before putting the finishing touches on the manuscript—and which I propose to dedicate to the memory of the original draughtsman of this Companies Act, which I consider a very extraordinary instrument. The idea of incorporating companies by letters patent—harnessing, so to speak, the royal prerogative, and making a creature which corresponds to the old chartered companies like the Hudson Bay Company and the East Indian Company and the British South Africa Company—was a stroke of genius. I have taken considerable pains to try to find out who the draftsman was, and I was interested in this thing for its own sake, and for the moment I have no axe to grind; sometimes I have. So far as the interest of the investor is concerned perhaps my views are coloured by a rather tragic experience I have gone through in the last two years, trying to straighten out the affairs of a company which was promoted by a resourceful gentleman from the state of Maine, who came up to this country and took somewhere near $4,000,000 out of the pockets of some 14,000 people in this country, and the only protection we had was under these prospectus sections which it is now proposed to weaken, and perhaps to wipe out. That is taking too long, perhaps, but roughly explains by interest.

The only other point is this. It is serious, and I mention it at the risk of being considered impertinent, but my views are rather strong on the subject, and you will pardon me if I put them strongly. In brief they are these: that if you pass the Bill respecting investment companies as it stands, as you have it here——

The CHAIRMAN: That is not before us just now.

Mr. WEGENAST: But the corresponding provisions, or the original provisions in the Companies Act are before us.

The CHAIRMAN: Just speak to the Companies Act. We will take up the Investment Companies Act later.

Mr. WEGENAST: What I submit, then, is this; that if you will pass the sections in the amendments to the Companies Act, or something of that kind, or something from that standpoint—from the standpoint of company law—you will be on safe ground; but if you pass them in the other form they will be invalid.

Hon. Mr. McMEANS: I do not understand that. Will you be a little more explicit?

Mr. WEGENAST: The Parliament of Canada has jurisdiction over the incorporation of companies with objects other than provincial. The incorporation of companies with provincial objects is a matter for the provinces. The incorporation of all other companies is a matter for the Dominion. There is nowhere in the Dominion—now I am getting into the other Bill, I am afraid, but they dovetail into one another—there is nothing in the enumeration of powers under the British North American Act that I know to justify the Parliament of Canada in undertaking to regulate the business of investment companies. You can regulate the company qua company—as a company—the number of directors, method of election, meetings of directors, stock structure, and all that sort of thing; you may regulate the amount of dividend, the way in which the dividend shall be calculated. In the case of investment companies the problem is how much capital you allow them to dig into to pay the dividend. You might regulate that if you did it from the standpoint of company law. If you start at the other standpoint, my submission is that the labour of this Committee is wasted. In other words, the Bill to regulate investment companies would be invalid; and I venture to say, with a full realization of what I am saying, that if you will call as a witness, let us say, Mr. Edwards, of the Department of Justice, he will support the views that I am laying before the Committee. Last year, before the Committee of the House of Commons, Mr. Edwards expressed corresponding views as to the Insurance Act; and my suggestion would be—I have nothing more to say on it—that if there is any doubt, and there will be, as to what I am submitting, you might call Mr. Edwards to confirm, or otherwise, what I am saying. I thank you.

The CHAIRMAN: Does any person wish to ask any question?

Mr. E. G. LONG, K.C., Toronto:—After experience in financing I might say that what Mr. Wegenast has said in regard to companies selling securities through underwriting houses was caused by restrictions in the prospectus section, but sound financing suggested that as the only way by which companies having funds they required to sell could realize on their securities. Secondly, regarding the information given by the prospectus, experience has shown—and I have tried to mention it at the last meeting of the Committee—that the information through the prospectus would be no protection whatever against high-pressure salesmen. It is not a matter of information that allows an investor to exercise sound judgment, and the experience over the last five or ten years here and in the United States has shown that the control over the human

individual who gets money from the investors is the way to get people protected, and that is in vogue now in many of our provinces. The abbreviated prospectus is not allowed in Great Britain at present under their Companies Act; it is done away with. The question of no-par-value is the basis of objections made by Mr. Weganast. There was some statement made, I think, that went on record, that might be taken as an admission on our part. No-par-value stock is a matter that is growing, and as Mr. Wegenast said, there has been a certain amount of uncertainty to it, about the way it works legally and from an accounting point of view. There has been uncertainty as to what capital accountants would put against no-par-value stock. The suggested amendments here make it quite clear that the amount that is capital is decided by the directors. Everything above capital, after you have taken care of your liabilities, is a surplus. You must have the capital retained, and you must have that defined; then over and above your earnings accumulated from year to year are the distributable profits of a company. If you capitalize every dollar you get in except that which is referable to share capital you never could pay a dividend, and it is clear by those difficulties that he has suggested—which were really stated by Mr. Stairs, and perhaps I am entrenching on his field in mentioning this, but it is with the intention to clear that up—that those sections were put in. The effect is this, that no-par-value shares are issued. The directors say "what number of dollars we get in from those shares will be capital." That is permanently frozen, as it were, into the company's structure. So much above that settled rate is surplus. It is distributable if we wish to make it so. That surplus grows from year to year as the company prospers, and can be used to distribute to the shareholders, the proprietors. Now, the value of the share and the interest represented by a share, whether it is par value or no-par-value, is represented by the capital and accumulated surplus of the company; and the amendment which we have made there is simply for the purpose of clarifying what has been to a certain extent uncertain up to the present time, and also, as Mr. Stairs mentioned, without my repeating, to enable a company taking over assets which represented capital, to carry forward the same surplus into the new company. The one experience that Mr. Wegenast mentioned is the gentleman from Maine who took the money that he mentioned; but that gentleman would never have been able to take anything like that from Ontario, where he operated, if the Security Frauds Prevention Act had been in force. The legality and constitutionality of that, as dealing with individuals in the province and as dealing with property and civil rights there, I think are equally unquestionable, so far as legality goes, and it is the unanimous opinion of the law officers of the Crown in the various provinces.

The CHAIRMAN: Mr. Osler, K.C., of Toronto, wishes to address the Committee.

Mr. BRITTON OSLER, K.C.: Mr. Chairman and gentlemen, I wish to make two or three suggestions. I am entirely in accord with what Mr. Long has said with regard to no-par value stock, but I would suggest that it be carried a little further. The section as proposed is quite ample for the future, but during the last few years it has been a very difficult thing for directors of the company acquiring assets in consideration of no-par value stock to determine what the actual value or consideration is. For instance, they issue their stock against a share of some other company. Are you going to take the market value or the book value, or what? What the directors decide there fixes the capital. I have one or two instances in mind of one or two companies where the directors are in quite a quandary at the present time. I would suggest there that that section be broadened so that by supplementary letters patent after passing a by-law of the directors the Secretary of State may in such supplementary letters patent fix the capital stock where it has been already issued, as well as fix it where it will be issued in the future.

The other point is a question of amendment to provide that signatures on stock certificates may be lithographed or engraved, or at least one of them may. Under the New York Stock Exchange rules they will not, as the Act now stands, accept lithographed signatures. To take an illustration, in the case of the International Nickel Company, it is going to cost that company about $25,000 a year, probably, to put an additional signature by longhand on the certificate. The Exchange rules will not permit such a signature, unless the Act specifically gives power. I do not think that there is any doubt that under the present Act the directors can pass a by-law giving that power, but that is not sufficient under their rules; and in view of the international character of a good deal of the financing, and the necessity of listing on the New York Stock Exchange, I would suggest that a provision be made so that one signature, at least, may be an engraved or lithographed signature.

The only other matter I wish to speak to is the question of the section with regard to transfer agents. That provides that the company must keep a list of the shareholders at the Head Office. The practice, I think is pretty general that where a large company has a transfer agent and registrar, they do not actually keep their list of shareholders, but they get that from time to time from the transfer agent when it is required. For instance, to refer again to the International Nickel Company, that company has 25,000 to 28,000 shareholders, and the list varies from day to day. The transfer agent keeps the list; and the Head Office of the company is at Copper Cliff, Ontario. Obviously, a list of shareholders kept at Copper Cliff would be of no use to any one; but if it is kept by one of the transfer agents in Canada, the list would be much more convenient. I would also suggest that it be made clear that a transfer agency, a branch transfer agency, could be kept not only in Canada but without Canada, because, there again, where you get a large corporation, the only ground upon which they could be brought to Canada would be that there was a transfer agency in New York where the American holders of stock could make their transfers. It seems to me that it should be arranged so there could be no doubt cast on the legality of the establishment of an agency there, or in London, England, as the case may be, provided always that there was a transfer agency in Canada. I have no further suggestion to make, Mr. Chairman and gentlemen.

Hon. Mr. DANDURAND: I have a motion to make—I do not know whether it may meet with favour—but I see that there are features in this Bill which are highly technical, and I move that a Sub-committee be appointed to examine into the suggestions made and report later to this Committee. I suggest tentatively that the Committee consist of Hon. Messrs. Beique, Beaubien, McMeans, Willoughby, Murphy, Black, and the mover.

The motion was carried.

The Committee then proceeded to the consideration of Bill V-3, An Act respecting Investment Companies.

Hon. Mr. DANDURAND: Members of the Committee have heard the memo. I read in the Senate, which came from the Finance Department, on the Bill which is now before us. If any further explanations are desired, I think they may be available now. Mr. Finlayson has had very much to do with the Bill, and I feel sure he would be only too glad to answer questions concerning it. The Bill covers considerable ground, and I understand there are representatives of financial houses who desire to be heard. I do not intend to press this Bill forward quickly; it should run on parallel lines with the Companies Act Amendment, because they have similar clauses in some respects. We would like to have as much light as possible upon the Bill.

The CHAIRMAN: The first name on the list is Mr. Arthur Meighen, K.C.

Right Hon. Arthur Meighen, P.C., K.C., Toronto: Mr. Chairman and gentlemen, my authority is to represent four investment trusts, vitally affected by this Bill, and to oppose the Bill in its present terms very definitely and very firmly. I cannot assume that the Bill as drafted has been very carefully studied by other than the draftsman himself. Perhaps it would be well to put the feeling we have as to the effect of the Bill in one sentence as I begin. If this Bill is to pass, or even if its main features pass, investment trust business in Canada, so far as Dominion charters are concerned, is at an end. The Bill in effect restricts investments to only such as are authorized by the Insurance Act. An investment trust can serve no function whatever, if it is restricted to such investments.

The purpose of investment trusts is to afford the average investor an opportunity of participating in a diversified and widely spread list of securities, hoping to attain by such participation a share in the general advance; and secondly, hoping to attain more than that share because of the employment of experience and management, armed with the information necessary for such investment and the statistics that bear thereon. The assumption, at all events, upon which an investment trust rests is that the average investor requires some assistance for that character of investment. He does not require it at all for the character of investment to which we would be limited by this Act. Anybody can make this class of investment; he does not need the services of experts, or the advantages of statistics. The average investor need not pay commission to investment trust companies, because he can buy such securities himself. Anybody can buy Government Bonds.

The Bill as drafted virtually says to the public: "If you are going to invest in Government Bonds, municipal bonds, companies that have long paid dividends on their preferred stock, in these securities, and these only up to a certain amount, we are quite willing that you employ the services of an investment trust and pay them; but if you are going to invest in other securities, where more skill is necessary, you will have to do it yourself; we won't let you employ assistance in buying more involved securities." The logic of that situation is apparent immediately you state it.

Investment trusts, while they use the word "trust"—at least a number of them in Canada do—do not use the word in the sense of a trustee relationship between themselves and their shareholders. The word "trust" has that meaning, I know, but that is not its only meaning. The two words "investment trust" used together have a distinct connotation in all other English-speaking countries, and they are getting to have the same connotation here. They do not mean a trust in the sense of a trustee relationship, but a trust in the sense of a pooling and a gathering together as would be in an amalgamation of several institutions, a gathering together under one institution. In England almost without exception these institutions are known as investment trusts, and with one prefix or another, they are all called that. The same is true in the United States. In Canada there has been considerable resistance to giving our investment trusts here a like advantage, that is the use of the term "trust." The resistance, I think, has been mainly on the part of the regular trust companies, a resistance that one can understand but which, if given effect to in law, would very seriously impair the investment trust business of Canadian companies as against that of American and British companies.

The people of Canada are getting to understand this distinct connotation of the term "investment trust." In fact, I have never run across any confusion anywhere. As time goes on they will more and more understand it. I see no sign of confusion as between investment trusts and regular trust companies.

Upon these arguments and for these reasons, the name "investment trust" was given to all our companies. It has been given to others. If it should not have

been given—and that I very distinctly dispute—the time to refuse was at the beginning. It is not fair to come along now and say, "Because you have that name, we are going to put a hoop around your legs; we are going to virtually blindfold you and direct your operations; we are going to strangle you, because you have taken that name, by restricting you to only trust investments." Surely such a course as that will not be taken?

It seems to me that the only right thing to do is to pursue the policy that has been followed where investment trusts have flourished, largely in England. The public do not take very long to understand the nature of an investment trust. There is no trustee relationship involved in the word "trust," and therefore there is no particular reason for putting us in charge of an officer of the Civil Service, or a Minister of the Crown, any more than there is for putting any other enterprise in the country in a like charge. If it is the intention to take responsibility for all investments the people make in the country, then the Department should go at it consistently and take it all. Manufacturing concerns sell their bonds to the public, and they sell their stock. Why should they be allowed to do that without the supervision of the Department of Finance? They are just as much trustees for their shareholders as we—exactly the same relationship exists. So that if the Civil Service is to be glorified into a colossal bureau of business control, at least put all businesses in the same position. If we assumed the relation of trusteeship the case would be different, but we do not assume it and we do not pretend to.

The main purposes of this Bill are to place a degree of supervision and licensing—as it is called -upon this class of enterprise alone; to confine the operations of investment trust companies within limits not provided by their charters, and the result would be the curtailment and destruction of their charter rights. To that we most strenuously object. We come to this House to secure an act of incorporation; we voluntarily impose certain restrictions in our own charter; we ask that these restrictions, which are severe in themselves, be there embodied, and we do so because we believe they are sound restrictions applicable to our business. We lay these restrictions before our prospective purchasers; we tell them what we have done, and that the Parliament of Canada has given us a charter to operate within these restrictions. We sell our stock, millions of dollars of it. Every stockholder has a certificate based upon those restrictions and upon the charter of the company given by this Parliament. But after our shareholders have the certificates in their hands, this Bill comes along, and if it is passed it will cut those charter rights in two—far more than cut them in half—and destroy the value of the certificates to the extent that the Bill curtails unnecessarily the power of the company. The purchaser did not buy in order that the powers that his company were to exercise would be later curtailed; he bought because the powers were stated definitely and he knew what they were.

I do not say that we would object—I do not think we would, or that any company would object—to supervision that would be involved in seeing to it that we lived within the charter obligations imposed when we obtained our license. Nor do I think any company should object to any supervision that would be involved in seeing to it that every shareholder has full information as to the company in which he invests. Nor would there be any objection to Government supervision with a view to making certain of honesty of management, or that facts concerning the management are clearly made known from time to time. These measures of supervision are not imposed on other companies. For that reason, and for that reason alone, could we object. We do not object. But we do object to Parliament coming in and destroying a charter which it has already granted; and we do object to being made mere office boys of the Civil Service. We won't require any capacity in our organization any more;

if we have it we had better get rid of it, if this Bill passes. Anybody could manage an investment trust, if this Bill should become law, for an investment trust would fulfill necessary no function at all.

We would like to fulfil the obligations we have assumed to our shareholders, but we would be forbidden to do so if this Bill passes.

Where is the demand for the restrictions proposed in this Bill? If there is a demand, I have not heard of it. However indistinctly or indirectly any public demand has been made, where is the precedent for it? The home of investment trusts is in England. I would like some honourable member of the Committee to suggest to me where any procedure of this kind has been followed there. In England there have been investment trusts for 70 years, and they have been of tremendous advantage to the average investor in that country. I have not heard of any movement of this character over there; and there is certainly no similar proposal in the United States. Where would we be in competition with the investment trusts of those countries, if our hands and feet are to be tied with legislation of this kind? The immediate result would inevitably be that we would wind up and transfer our assets to some company that can do business, procuring a charter from some authority where charter rights can not only be obtained but can be held intact after they are obtained.

I know, of course, that the Committee will wish to go over the Bill in detail, and when it comes to that I can express our objection to various clauses. But I have outlined the essence of the measure, and I have certainly painted rightly and correctly the result that would follow the passing of the Bill. That, I think, is the only function I can perform at present.

Hon. Mr. DANDURAND: I understand that your main argument is directed against any retroactivity in the Bill?

Right Hon. Mr. MEIGHEN: Not at all. My argument is directed to the very essence and principle of the Bill.

Hon. Mr. DANDURAND: Does it not apply more especially to companies that have already obtained a charter,—

Right Hon. Mr. MEIGHEN: It does that; but—

Hon. Mr. DANDURAND: —whose rights go beyond this Bill and are invaded by this Bill.

Right Hon. Mr. MEIGHEN: It does that; but the Bill not only affects the holdings we now have, but it completely restrains us in respect to future companies, and I strongly object to that. We purpose incorporating investment trusts, but we do not intend to do so if we are to be mere automatons of the Civil Service. In a word, the passing of this measure would put the entire field of investment trusts under other authorities than the Parliament of Canada.

Hon. Mr. MURPHY: Are all the investment trusts to which you refer incorporated by special Acts of Parliament?

Right Hon. Mr. MEIGHEN: No. They are incorporated under the Companies Act in so far as those that have Dominion charters; but there are quite a number incorporated under provincial charters, and I fancy that they feel very happy to-day that they are so incorporated.

Mr. E. G. LONG, K.C., of Toronto: Mr. Chairman and gentlemen, I just want to say a word or two on behalf of the Investment Bankers' Association of Canada, which I represent, in connection with the Companies Act. I have no desire to speak to the details of the Bill, excepting on one point, and that is the definition of the investment trusts or the companies which come under this Act, found in section 2. We submit that that is far broader in its language than presumably the framers of the Bill intended. In other words, it will include a great many more companies than are commonly known as invest-

ment trusts. It would include the ordinary incorporated bond dealer company, the ordinary investment banking company, security companies that did not go to the public—security companies that were not engaged in the generally accepted function of the investment trust. If the Bill proceeds further, the matter of definition is one of great importance, in order to make it quite clear that the corporations affected are what Mr. Meighen has described as being well recognized investment trust concerns.

The second point that the Association wishes to lay before the Committee is the matter of general principle which has been very largely covered by Mr. Meighen. Presumably, the purpose of the Bill was to protect the investor who puts his money into what are now known as investment trusts. We consider that the investor is protected in investing his money in investment trusts the same as he is protected when he puts his money into any form of corporate venture, by—and I am repeating what I have said before—the protection which is given through the control of the sale of securities in the various provinces. In England there is no control over investment trusts and the type of securities in which they can invest. I understand that in practically every case in England there has been a voluntary restriction or definition in their charter as to the type of securities in which they will invest, and certain regulations as to the form their investments will take. The same situation has obtained in the United States, where there has been a rapid growth of this type of business. In the United States there have been investigations made and a lengthy report was made by the Attorney General of New York and by Government authorities in some of the other States, and in none of these States has there been any definite requirement limiting or restricting the investments in any way. That is left to the decision of the incorporators of the company as to what restrictions they will put in, or if they put in no restrictions at all. It is a matter of judgment.

Investment trusts in Canada are vehicles through which undoubtedly we will attract—because we already have attracted—capital and not only from our own people. The public are given an opportunity to put their savings, their surplus funds, into companies where they can get a reasonable return from diversified investments, and where they will have the benefit of skilled management. These investment trusts have attracted and will continue to attract capital for industrial development in greater volume than ever before, and this capital will come not only from our own country, but from the Continent and probably even from the United States.

When you are dealing with investors in foreign countries there is undoubtedly a cachet in a Dominion charter; it is recognized usually as of a more satisfactory standard—with all due respect—than a charter from a province; and it would be, we submit, a catastrophe if you prevented investment trusts organized along the lines which they have in England, organized along the lines that we and a number of other companies, including those Mr. Meighen represents, have followed, having an opportunity of attracting capital to Canada, where we certainly need it and can use it. A Bill such as this would absolutely prevent the formation and operation of investment trusts not only in Canada but abroad. There has been no bad experience in England—there have been some sad experiences in almost every type of business—and there have been no bad experiences in Canada since these companies have been incorporated under the Dominion Companies Act, and this Bill seems to be an effort to exercise a paternalistic control over this type of business, far in advance of any necessity for it. If some unhappy instances could be pointed to, showing a loss to the investors, or mismanagement or misappropriation of funds, there might be some grounds for the Government stepping in.

Hon. Mr. DANDURAND: Would you rather wait for that experience.

Mr. LONG: I do not think you will ever meet it, and I do not think one should imagine it and kill a legitimate business on the assumption that someone in the future may go wrong or may make a mistake which will result in loss to the investors. So on the general question of principle, the Association submits, through me, that the Bill is one which should not be adopted; that investment trusts should carry on as they have, under letters patent, and that the conditions embodied in this Bill, which are really taken almost completely from the Loan Companies Act—a type of incorporation very different in its object and operation from investment trusts—should not come into force and, so far as Dominion incorporations are concerned, put an end to typical investment trusts.

Hon. Mr. MCMEANS: What control do you think the Department should have over these companies?

Mr. LONG: Just the same control that it has over pulp and paper companies, or any other manufacturing companies or concerns in which the public invest their money on the faith of the information given them, faith in the directorate, or the business the company is going to do.

Hon. Mr. MCMEANS: There is no control at the present time.

Mr. LONG: No.

Hon. Mr. SMEATON WHITE: In England isn't there a trustee in one of the Departments of the Government that controls these companies?

Mr. LONG: I don't think so, sir.

Hon. Mr. SMEATON WHITE: I thought there was.

Mr. LONG: Not to my knowledge. I am subject to correction. I understand they are incorporated under the Companies Act, and are just as free in their operations as a company incorporated to run any other mercantile business. Is not that so, Mr. Meighen?

Right Hon. Mr. MEIGHEN: There is a public trustee in reference to trustee matters, but he has nothing to do with investment trusts. There is no trusteeship.

Hon. Mr. LAIRD: Would not you think there is some distinction between a pulp and paper company and an investment trust, which carries the implication that it is something in the nature of a trust company?

Mr. LONG: I do not believe the use of the word "trust" carries the implication that it is a trust company carrying on a trustee business. There are a great many investment trust companies in which the word "trust" is no part of the name. These are details with which I am not as familiar as people who have been more particularly interested in investment trusts. I do not believe "trust" is a necessary feature of the incorporation of these companies.

Hon. Mr. TODD: Leaving out the word "trust", don't you think the people who invest in these investment trusts are of a different class from those who invest in paper mills, and the like?

Mr. LONG: I think they are probably more intelligent investors.

Hon. Mr. BEAUBIEN: If I understand you, in the investment trusts incorporated up to now, there are in the acts of incorporation some restrictions as to the investments to be made.

Mr. LONG: That, I understand, has been the practice—a voluntary restriction fixing limits which the incorporators felt were sound; that would give some assurance to the investor; that would recommend it to him; and yet that would give them a reasonably free hand to diversify investments and to obtain a return which would be more than could be obtained from buying tax free Government bonds.

Hon. Mr. BEAUBIEN: I suppose you commend that practice?

Mr. LONG: Yes.

Hon. Mr. BEAUBIEN: That practically means that the amount of money confided to the investment trusts will surely be invested in a diversified way.

Mr. LONG: Yes, sir.

Hon. Mr. BEAUBIEN: Now, if it is a good practice for the investment trusts that exist up to date, don't you think it would be a good thing, perhaps, to assure by legislation that the same precaution will be taken by the investment trusts created hereafter?

Mr. LONG: In the charter?

Hon. Mr. BEAUBIEN: Yes.

Mr. LONG: Depending on how restrictive or how elastic you make this; but there is no sign of elastic in the provisions of this Act.

Hon. Mr. BEAUBIEN: But leaving aside the provisions of this draft, which may be too drastic.

Mr. LONG: Yes.

Hon. Mr. BEAUBIEN: I refer purely and simply to the principle of the matter. I understand that both the Right Hon. Mr. Meighen and yourself state that the investment trusts created up to now have found it of advantage to bind themselves voluntarily to a diversified investment for their clients.

Mr. LONG: One of the common restrictions is the one which goes to ensure a diversification. In many of those charters you will find that after the company's funds reach a certain figure it must have securities in say fifty different types of industry, or securities of fifty different types. That is to force them to spread their securities over a certain area and to get the benefit of diversification. Speaking from what I know of the United States—and I think to a certain extent it is true of England—the tendency has been rather towards a loosening of these restrictions. In some of the earlier incorporations they mention not only diversification, but certain percentages in each class of industry; but they have got away from that, feeling that it hampered the sound business judgment of the Board, and the restriction now goes more towards securing diversification. On the other hand, you will find in England and in the United States many trusts that deal with only one industry—one the oil industry, another bank shares, another insurance shares—so the shareholder will know that he is getting expert management in a special industry, which has been very successful. So you have two points of view on that: one a variety of diversification, and the other, diversification within one industry.

But I still think on the question of principle, that where you have a sound, satisfactory board of management, it is unwise to hamper their judgment. It has been found unwise in all corporate business to try to hog-tie the directors, as it were, in the management of the business they control.

Hon. Mr. WEBSTER: These investment companies could not invest, for instance, in the Montreal Light, Heat and Power stock, for it has not paid the 4 per cent for the past seven years.

Mr. LONG: No.

Hon. Mr. WEBSTER: Therefore what I would regard as a very valuable and safe stock, they could not invest in.

Hon. Mr. DANDURAND: Perhaps it is that too much water has gone into the stock.

Hon. Mr. WEBSTER: The water has all been squeezed out, sir.

Hon. Mr. DANDURAND: For the information of the representatives of outside interests, I desire to say that this Bill is the outcome of a decision of this

Committee that a Bill should be prepared for consideration. It is true that the Bill has come here through myself from the Finance Department, but it is the outcome of the deliberations of this Committee. It has been duly drafted, and now it is for us to consider it and say whether or not it goes beyond what we are ready to accept. I want to emphasize, however, that this Bill is before us in obedience to the action of this Committee.

Hon. Mr. WEBSTER: May I ask at whose request the Bill was prepared?

Hon. Mr. DANDURAND: At the request of the Committee.

Mr. G. S. STAIRS, K.C., Montreal: Mr. Chairman and gentlemen, I have taken a very great deal of interest in this Bill since I first saw it, and I am sure that you will all realize that in coming here to speak I do so with all respect to the Committee. I think we all realize the circumstances under which the Bill was suggested: that it came out of the discussion on the amendment to the Companies Act, and I have regarded it, perhaps wrongly, as simply an experiment, a draft prepared and put before the Committee to enable the whole subject to receive proper consideration. I think that those who are given opportunity to do so would like to discuss it from that point of view. Though we may not approve either of the principle of the Bill or of its details, it may be a very useful thing to have had the subject ventilated in this Committee.

I do not want to take up the time of the Committee at any great length. I do not want to repeat what the Right Hon. Mr. Meighen has said, or what my friend Mr. Long has said, but perhaps I could touch one or two other points and emphasize one or two of the points they made. First of all, a great deal of trouble has arisen in this country—I think perhaps the principal trouble—from the designation of these incorporations as investment trusts. It is naturally suggested by people not familiar with such incorporations that there is something of a fiduciary character about them; that they may in some way resemble trust companies or something of that kind. I remember, and Mr. Mulvey will remember, that when petitions began to flow into his department for the incorporation of these companies, representations were made by the trust companies—including one of my own clients—complaining of the use of the word "trust" in connection with these companies. That opposition was not successful, and it was explained that the conjunction of the two words "investment" and "trust" indicated that these companies were something apart from the ordinary trust companies, and that there was no reason to yield to the complaints of the trust companies.

You gentlemen, no doubt, will have heard of the use of the word "trust" in many other connections. A measure which received a great deal of publicity in the United States was the Sherman Anti-Trust Law. In that case the word "trust" was used in the sense of a combine or something of that nature; it may be through some sort of loose organization, pooling properties of two or more; but the real sense of the word in that connection is combination in restraint of trade. There is no idea of trust company there, and very little, if anything, of a fiduciary character except the fact that sometimes a trust organization is used for pooling things together. Another form of association is one used very much in New England. I think they now speak of it as a "common law trust." They used to call them "Massachusetts trusts." These are simply unincorporated companies. People who want to form these associations vest their property in the name of one or more trustees, and they have a long instrument regulating the rights of the trustee and the beneficiaries, and to all intents and purposes they have a company. Technically they have the form of trust used in common law, but it is merely an instrument for holding the property, the trustees holding it for the people having its certificates. There are many different ways in which the word "trust" is used in relation to companies and business generally, and it has got to be distinguished from the ordinary

sense of fiduciary relationships established by deed and will and the sort of trusts that trust companies administer. These investment trusts are simply investment companies. You could drop the word "trust" and not affect the character or nature of the thing at all. They are simply organized to raise capital either privately or from the public to be invested in securities—bonds and shares—rather than in any definite single business.

With regard to the question of whether there is any necessity or demand for the regulation of these companies, it seems to me that the general principle ought to be considered. We have in this country statutes under which certain classes of corporations are organized and made subject to restrictions and regulations of various kinds. The chief example of that is the Banking Act. In addition we have the Insurance Acts of the Dominion and of the provinces, and the Loan Companies Acts. The Railway Act is a statute of the same general type. If you think for a moment you will see, I believe, in every one of these cases, that there is a general principle which suggests that the public is interested and that it should take more or less of a hand in regulating these companies. They have special powers in the exercise of what we call a public calling, like common carriers, or they come directly into the life of the nation and are essentially of it. The banks must be regulated because they have a monopoly of the currency and the note issue, and what is practically currency, the use of cheques. But coming down to detail, I do not think the intimacy of the banks' business is regulated to such an extent as it is suggested to regulate the affairs of these investment corporations by this Act. I need not mention the Railway Act. The railways are in touch with the public and are infringing private rights, and must be regulated. Loan companies are probably on the border line, but perhaps there is a case for the regulation of loan companies, for to some extent they are agrarian banks. But I cannot see anything in principle for the regulation of investment corporations. They are simply private organizations taking advantage of the general statutes which permit companies to be organized. They operate under the general laws of the country; they seek no powers; they have no privileges. There is no difference between a company organized to buy securities in order to make a profit or derive a revenue from them, possibly by resale and reinvestment, and a company dealing in any other commodity.

When my friend Mr. Long was speaking I anticipated the leader's question as to whether, perhaps, he was arguing that he did not want any precautions taken until the horse had been stolen. But I do not think that is the proper point of view at all. I do not see that in principle there is any necessity for that regulation of investment corporations when they do not ask for any special powers. When I say special powers, of course I mean powers that are not theirs for the asking under the ordinary rules of law and the rules of the statute which they operate under. If, unfortunately, it ever should become necessary to criticize this Bill in detail I should like to have an opportunity to speak again; but I should prefer not to address myself to that question this morning, and I merely want to say on behalf of some clients interested in this matter—investment trusts, and also investment corporations generally, because the Bill would touch everything, even a one-man company organized to buy securities—that from my experience generally in the legal profession dealing with things of this kind, it seems to me there is no necessity for the Bill and that the Bill is framed on a principle that is basically unsound. Of course, in passing, I remark what Mr. Meighen and Mr. Long have said—that it is practically prohibitory legislation. So far as having any beneficial effect, it will not have anything to operate on. In the first place, nobody can go to Parliament for a charter every time he wants to incorporate an investment company, and people will go to other jurisdictions. They are at liberty to do that. The banks, of course, cannot escape Parliament, but these companies could be incorporated

anywhere they wished, and thousands of investment companies that would be incorporated in Canada by foreigners and by our fellow subjects from other parts of the Empire simply would not come here at all. People who do not want to come to the jurisdiction of the Dominion would go to other jurisdictions.

Hon. Mr. DANDURAND: As I view it, this kind of company can be very successful; and it is not against the orthodox company, those that are well managed by high class people, that Parliament must guard, but against the abuse which is possible under the powers that are given to other companies that may be mismanaged. With that idea in mind, it strikes me that these companies can become very highly speculative in risking their capital in stocks of very questionable character. Here is a certain capital invested in very doubtful security; yet upon the investment of that capital, borrowed from the public, debentures may be issued, based upon a statement that the capital so far has been applied in very promising security, and in that way the ball will be kept rolling. Then one day the bottom will fall out of everything. Since you speak of loan companies being on the extreme border, of what has been allowed so far by Parliament in controlling public utilities and banks, is there not a case for a law stating to that extent these new ventures about to be launched seem to be a good moral risk? Otherwise will not a howl be raised in the country, and will not the question be asked: What has Parliament been doing in allowing these people to fool the public and not exercising any control?

Mr. STAIRS: Well, I think that the only answer to that is that the same argument might apply practically to everybody in any sort of business. I cannot see any real difference between going out in the streets and saying that I want capital to invest in an oil company, or to drill a well somewhere at the edge of the North Pole, and saying that I want capital to buy shares of, say, ten companies that are going to drill one at the North Pole, one at Labrador, one in the Turner Valley, and so on. There is no real difference. The principle that I tried to lay down, which it seems to me is a real principle with some basis of theory and some relation to fact, is that Parliament should regulate, and we can reasonably say ought to regulate companies where they are enjoying special rights that involve a monopoly, or some right that affects the public or private rights of citizens, or something of that kind. But where it is merely a question between man and man—my going to a chap and saying, "Do you want to go into a deal with me to buy stocks in oil wells, or gold mines, or milling companies, or anything at all?" that fellow can say, "No, thanks, Mr. Stairs, I don't want to buy your shares or buy your debentures." Then I have got to go to somebody else. But it is a very different thing when I want to put my money into a bank. I do not like to trust the stocking, or the hole under the oak-tree in the back lawn; I have got to go to a bank. The bank is established by Parliament, and regulated by Parliament. They are the people that are given the right to take care of my money for me, and they have to live up to certain rules and regulations. I cannot choose any more than I could choose if I wanted to take a trip by railway to go to Victoria; I have got to take either the people's railway or somebody else's railway; but otherwise it is a matter of private contract, and it seems to me that the less Parliament can interfere with those matters which are merely of private contract, the better.

Hon. Mr. WEBSTER: Do you know of any desire for this Bill from the regular trust companies that you may be associated with?

Mr. STAIRS: No, I have not heard the subject mentioned, and I may say I am competent to speak for my firm and for one of the large trust companies.

Hon. Mr. WEBSTER: So it is not from them?

Mr. STAIRS: I cannot speak for others, but certainly not from the Royal Trust Company.

Hon. Mr. Beique: In your opinion the trust companies would have no objection?

Mr. Stairs: I mentioned at the beginning of what I said that the trust companies did at one time object.

Hon. Mr. Beique: But they would be reconciled now?

Mr. Stairs: Well, they bowed to a decision that was made at the time, and dropped their protests. That is merely incidental, of course, to this whole subject. I mean that could easily be aroused by saying that you could not use the word "trust." I cannot speak for my right honourable friend over there (Rt. Hon. Mr. Meighen), but I do not know that he pinned his entire case to the word "trust" in "investment trust." The principle is much wider than that. I am really not authorized to say whether the trust companies would object or not. I told Senator Webster I had not even discussed the subject with them, but I do not think they could make any sound objection to it.

Hon. Mr. Webster: They never asked you about it?

Mr. Stairs: They never asked me about it, and I do not think they would have any objection to it, but I think they will have to make clear in the Bill the distinction between a trust company and an investment trust, so that people will know that they are two different things.

Hon. Mr. Beaubien: You have probably incorporated investment trusts many times?

Mr. Stairs: Yes, and I have another that wants to incorporate, but there is an embargo on them at present.

Hon. Mr. Beaubien: I wanted to find out from you, who have incorporated those companies, did those companies ask to be limited in their investments?

Mr. Stairs: They did, Senator, for this reason; they advertise it; they want to select their investments.

Hon. Mr. Beaubien: When they select their investment, what is the reason? Is it because they want to protect themselves against improvident investments of money confided to them, or is it because they want to address themselves to a certain class of the public that are more apt to give them the money for investment? What is the purpose of the limitation?

Mr. Stairs: It might be either of those purposes. Some of them restrict themselves, for instance, to investments in some single sort of industries, like oil company stock. They probably do that with the idea of encouraging people from the view of hoping to gain large profits because of the speculative nature of oil companies generally, but to deal in shares on a broad basis, a safer basis than buying a single oil company stock. On the other hand, where you have a general investment trust, that is to say, that does not intend to operate in any particular line of investment, and they adopt a standard, say they are more or less standardized—everybody likes to vary them a little bit—in that case they want to advertise the fact that they have other securities by reason of not putting all their eggs in one basket. That is, there is the diversification idea.

Hon. Mr. Beaubien: And that helps them to get capital?

Mr. Stairs: Probably they think it does.

The Chairman: Thank you, Mr. Stairs. The next speaker is Mr. Hugessen.

Hon. Adrian K. Hugessen, K.C., Montreal: Gentlemen, I will not detain the Committee for very long. I wish to support what has been said by the gentlemen who have preceded me, but I wish to view the matter from a slightly different angle. They have dealt with this Bill from the point of view of investment trust companies, properly so-called. Now, the Bill as it is drafted applies not only to properly called investment trust companies, but to every company having as its principal object the investment of its funds in shares and securities.

Now, I doubt whether the Committee realizes the extent to which companies are incorporated with that principal object of investing in securities under the present Companies Act. I took the trouble yesterday to go through the official Gazette, which gives the incorporations of all the companies, for the past two months—the months of March and April—and I found that during those two months alone 47 companies had been incorporated with the principal object of investing in securities. That is an average of something like 250 companies a year. Now, of those companies incorporated for that purpose, I doubt whether 5 per cent of them have offered to the public for capital, or ever intend to offer to the public—of this country at any rate,—for capital. There are a number of so-called private investment companies, and moreover, there are a great number of persons in the United States and in Europe who wish to take advantage of the very excellent provisions of the Dominion Companies Act, and to incorporate companies here to take advantage of our Act, who would be deterred, who could not come here, if this Bill was passed.

This Bill provides that every investment company must be incorporated in the future by Act of Parliament, and it prescribes very serious limitations on the class of investment which each company may engage in. I take it that the object of this Committee is to protect the public against wildcat investment schemes; but I wish to point out that if the Bill passes in its present form it will take in a very much larger class of companies than the Committee intends to deal with.

Hon. Mr. MURPHY: In other words, it would affect companies whose primary object was not to ask investments?

Mr. HUGESSEN: Precisely. I wish the Committee would allow me to give one or two examples from my own practice in the last few months, showing what the effect of this Bill would be on certain particular clients. A few months ago I incorporated a company for some French clients, with a very laudable object of permitting a number of French capitalists to interest themselves in Canadian mining companies of the better sort, such as Noranda, International Nickel, Consolidated Smelters, etc. That company made no public issue at all in this country, and has no intention of making any such issue. By its charter it is provided that it must invest in the shares of mining companies principally. That company would come under this Act. The result would be, if section 64 of the Act applies to this company, that after the 1st of July next that company would only be able to invest 50 per cent of its assets in the securities of mining companies, for the very purpose of which it was incorporated, and the remainder of its assets it would have to invest, 10 per cent in banks and insurance companies and investment companies and public utility companies and railway companies. The Commitee will see that that is absolutely inapplicable to a company of that kind.

Then there is another company which I incorporated some months ago for clients in New York. The reason why they wished to come under the Dominion Companies Act was that the previous company was incorporated in New Jersey, and they had the idea of amalgamating with another incorporation, and under the laws of New Jersey they could not go through those amalgamation proceedings so conveniently as if they incorporated in Canada, under a Canadian company. That company is a private company, with only 30 or 40 shareholders, and its investments are largely confined to public utilities. Now, if this Bill passes that company will have to diversify its investments. Of course that won't happen; the company will go away, and what will happen will be that no such company as that will come to Canada for that purpose in the future, and this country will lose considerable revenue from incorporation fees payable to the Department of the Secretary of State, amounting to a very considerable sum from those companies, and the annual fee payable upon the filing of

the annual return to the Secretary of State; and then the province of Quebec receives a considerable revenue from these companies by the way of annual tax on capital.

It is impossible to conceive that those gentlemen, who have the option of coming here or going to Bermuda or going to Mexico or Cuba, if they have under this Act to get a special Act of Parliament and go to the expense thereby involved, and then, after they have done that, if they have to diversify their investments and submit to the Superintendent of Insurance—those Americans who have nothing to do with Canada, whose investments are all in the United States, who have never made a public offering in Canada—if they have to submit themselves under this Bill to a Department of the Treasury, why, they will not come here, that is all, and the Committee can well understand why.

There is another company I am in course of organizing for some American and European interests, with the idea of investing principally, almost entirely, in the shares of European insurance companies and banks. The reason why those people come here is because, as I say, English capital and American capital are both involved, and Canada is a very convenient sort of half-way house between the two. If those people have to go to the trouble of having a special Bill put through Parliament they will not go. Furthermore, the very name of the company implies that it is going to confine itself to investment in insurance shares, which makes it nugatory to attempt to apply the provisions of this Bill to it and to make it confine its investments to such and such a class of interest, and 10 per cent to such another, and so on.

There are numerous other classes of private investment companies which never make public offerings in this country, and never have and never will make public offerings to which this Bill would apply if it were passed. There is one class of company that I might mention, and that is an investment company incorporated by an individual here, a wealthy Canadian who is perhaps owner of a great number of shares and securities in the United States and various countries. Upon his death, if his name appears personally as the owner of those shares and securities, his estate will be liable to pay succession duties perhaps in half the States of the Union as well as in Canada. Well, it is a very common practice, and I do not think it is at all one that should be discouraged, for that Canadian individual to incorporate an investment company here, to whom he turns over those securities. He continues to pay succession duties in the province in Canada in which he resided, because that is not affected in any way, but the effect is that his estate avoids paying succession duties in all those other countries. That would be impossible if this Bill passed.

I just wished to go into a little more detail than the gentleman who preceded me, and give to the Committee a few examples of the way this Bill would work in practice if it is passed.

The CHAIRMAN: Any questions, gentlemen? I think you, Mr. Hugessen.

The CHAIRMAN: The next speaker is Mr. A. W. Roebuck, President of the Diversified Investment Trust, Limited, of Toronto.

Mr. A. W. ROEBUCK: Mr. Chairman, I do not know, representing the particular institution it is my duty to appear before you to-day to represent, that I will say quite so many or so severe things against this Bill as those who have preceded me, because I think that the institution I represent is the type of institution which the drafter of this Bill had in mind when it was drawn. It is an investment trust, under that name, incorporated about one and a half years ago, and which diversifies along the lines, evidently, of the drafter of this Bill.

I say I would not attack it quite so strenuously as the others from the standpoint of the company that I represent, but I think I would attack it equally strongly from the standpoint of the industry at large. The company that I represent has restricted its investments, as has been suggested by a number

of other speakers, but it has been on a different principle from that evidently aimed at in this Bill. The restrictions have been for the purpose of diversifying, not with the idea of substituting some stereotyped rule of investment for the wisdom of the directors and investment officials.

Let me point out that our company requires that there shall be $150 behind each $100 of bond investment, because bonded investment rests primarily upon physical assets. But it makes no such provision with regard to common stock, because naturally it is the earning power of the company that is considered in that case. Now, those are the only restrictions so far as the quality of the investment is concerned. The balance of the problem of quality is left to the wisdom of the investor, and I submit that it is utterly impossible to substitute the wisdom of lawmakers and the drawers of Bills for those who are doing the active work of investing.

This Bill proposes to say to us, "You shall invest in a company that has paid dividends for the last seven years at the rate of 4 per cent." Now, I think we can go on operating, and comply with that regulation. We can in the particular institution that I represent. But I say that it will hamper our operations. The investments that we have made and that we hope to make are along the lines contemplated by the person who drew that paragraph, but the paragraph is arbitrary, not based on good principles, and the result would be that many good companies in which we might invest would be excluded from our field. Our portfolio manager is here and can give a number of illustrations to show how we would be prevented from investing in the securities of many good companies which are not paying dividends, while we would be able to invest in the securities of other companies that are not as good but that have paid dividends for seven years. The payment of dividends is not a criterion as to the soundness of a company's securities.

Hon. Mr. WEBSTER: Is it a fact that many companies have impaired their assets by paying dividends?

Mr. ROEBUCK: Quite so, sir. As a matter of fact, any company is poorer to the extent to which it pays dividends. The criterion as to the soundness of a company is its earning power, how much it writes off for depreciation, and—

Hon. Mr. LAIRD: Is it poorer if its earning powers justify the dividends?

Mr. ROEBUCK: Yes, it is poorer dollar for dollar that it pays out in dividends than it would be if it used the money to improve its assets.

I wish to commend the Committee, not to criticize it, for the efforts which it has put into this Bill. But the Bill looks to me to be somewhat immature, and a worse feature than its immaturity is the apparent attempt to lay burdens upon those who are carrying on the business.

As I say, this company can continue its operations with this Bill in force, but this company has undertaken the organization of a very considerable and very extensive analytical system. It costs money, it is true, but we think the time is rapidly approaching when our investment service can be used by other companies as well as the one which now uses it. Like Mr. Meighen, we hope to organize other companies, but this Bill says that we cannot organize a company unless we have $250,000 capital subscribed and $100,000 paid in over and above all liabilities. Now, it may be, and I think it is likely, that we shall desire to organize some small companies for special purposes in limited fields, companies specially adapted to some particular field in question, and to give to such companies the general services of investment. A large concern is able to afford it, but it is out of the question for smaller companies if that regulation passes.

Under the Bill a burden is laid on the directors who make mistakes and in some way invest in securities not authorized by the Bill or, I presume, by their charter—that is, if they make a mistake as to a question of fact—in that they shall be personally liable for any losses that are incurred. In criticizing this, I

am not speaking particularly for the directors, although I am one and would be liable to such burden, in the event of such a mistake by my company; but I think that thought is immature, and that just a little of that kind of thing will make it about as dangerous to take care of public money as it is to carry dynamite in one's clothes. The most that can be asked of any director is that he shall not be negligent in his work. If he is blameless in that respect, he should not be put in the dangerous position that the Bill stipulates.

The restrictions in our charter were satisfactory to our shareholders, and they signified it by paying their money into our hands. The added restrictions in this Bill would cut directly across what they have approved, and would impose unnecessary impediments without any resulting beneficial effect.

As I have said, our portfolio manager would like to give you some illustrations of how good companies would be excluded and poor companies would be included, under the proposed regulations. You should not attempt to cramp the genius of those engaged in this business, for there is just as much scope and field required for this class of company in speculative investment as there is in trust company investment. I think you can disabuse your minds of any impending disaster in connection with these companies.

If I went out, as Mr. Stairs has pointed out, and asked some people to subscribe to a mining venture, I would put all the funds that they put into my hands into a hole, and if that hole did not have metal at the bottom of it they would lose every cent they entrusted to me. If I went into a trading institution, with every dollar that they put into my hands I would probably buy goods that could be sold for $2, but if I could not sell the goods, or if I could not sell them at a profit, the money would be lost,—or at least a portion of it would. But this could not be the case where people invest in the shares of an investment trust, because with any reasonable diversification no grand disaster can overtake us. We may lose on one or two investments, and in a wild crash of some kind our securities may go down, but the earning power is still there, and the very worst that could happen is that we may have to suspend our dividends till we have made up some of our depreciation. But it is impossible to go into bankruptcy so long as ordinarily reasonable care is used. On the other hand, the general advance in business in Canada during the last generation or more, and the prospect that business and industry not only in Canada but all over America will continue to advance, are such that investment companies have only to be honest, reasonably intelligent in the selection of their investments, and reasonably conservative—but you cannot impose the conservatism—in the choice of their investments, and the growth of the companies, with resultant profits, is certain. There is no need to fear disaster for these investment companies any more than for commercial or manufacturing organizations.

Hon. Mr. McLennan: Didn't the British investment trusts, after having had a great deal of success, suffer a slump and go through a very bad period?

Mr. Roebuck: I suppose, sir, they have had a number of slumps, and so will we; but the point I would like to make to you, sir, is that notwithstanding the slumps through which the British investment trusts have gone from time to time, they have remained in business and have proven popular with investors, have retained their popularity.

Hon. Mr. McLennan: Did not some of them go out of business?

Mr. Roebuck: I am afraid the subject is a little bigger than I can handle, as far as that question is concerned. As I say, we have been actively engaged in investing funds in this way for about one year, and in that time we have got a good deal of business. But the industry is new in Canada. We have been watching the British methods and following them as closely as we can, but I have no information that some of the British companies went out of business; there was no reference to that in any of the literature I have read about them.

Hon. Mr. McLennan: It was some thirty years ago—I did not mean lately.

Mr. Roebuck: Perhaps thirty years ago, but for the last twenty-five or thirty years I do not think there has been any trouble in that regard.

Mr. Frank B. Common, K.C., Montreal: Mr. Chairman and gentlemen, this meeting has been devoted to inquiry in respect to this subject. The business has grown to such proportions that it is proper that we should conduct investigation as to what action, if any, should be taken. I feel that this inquiry has been quite comprehensive, and that the more important points have been very clearly brought out; and I do not consider it necessary to review or emphasize them.

I would particularly mention that we should not lose sight of the fact that this is an inquiry with respect to investment trusts, as different people understand them in different ways, and that therefore any action that is taken should be confined to investment trusts, and that the very wide variety and large number of other companies doing investment business, but who do not come under the classification of investment trusts, should be excluded. They are not excluded at the present time under the Bill.

I would like to bring out this thought: The investment trust is an institution that is the result of evolution. It started with the idea of pooling the investments of different investors, placing their money in the hands of people who, perhaps, had greater experience and judgment in the selection of investments than the larger number of shareholders of the company. When the idea was first introduced diversification was established by the companies themselves as a policy that would give the maximum of protection. But they were feeling their way, and as they get more experience in the matter of pooling investments and became more expert judges of the soundness of securities, certain restrictions came to be recognized by many people as not necessary, and, in fact, as very seriously impeding progress. Therefore, the idea of diversification among many industries has by a large number of companies been abandoned, and this policy has been followed by one of specialization in some industry, such as tea, rubber, public utilities, and any other big branch of industry. I might cite, as a rather interesting example, a company which I have just incorporated, a whaling industry investment trust, a company under control in Norway, carrying on whaling operations exclusively in the Antarctic regions, financed in London, and incorporated in Canada. If we applied the principle of diversification and required that the people running this company should invest in bank shares and railway shares and insurance shares and Government bonds, and so forth, I venture to say that nobody would place their money in the hands of an expert whaler for the purpose of investment in other fields.

Not only has there been a specialization in certain lines of industry, but now we have investment companies specializing in geographical areas, and the people controlling these companies have special knowledge of the areas. And we have certain companies that are coming out now which are formed for the purpose of securing profits on capital appreciation.

As a result of evolution during the last twenty or thirty years, the term "investment trust" now includes a wide variety of institutions. And none of us know what it may include in two, three, or ten years from now. Therefore it would appear that whatever policy is adopted in regard to new regulations for these companies, should permit of sufficient discretion being used so that there should be included under the classification of investment trusts whatever according to sound business is accepted as such; and that our Canadian Companies Act, or any other Act that we may adopt, should provide for the facility of operation of these institutions without undue restraint.

The question has been asked as to what may be suggested as a degree of regulation or proper supervision. In our discussion a few days ago of the proposed amendment to the Companies Act, certain features of that Act were emphasized. I do not recall that there was any special consideration of the section which it was proposed to embody applying to companies which would use the words "investment trust," and I would suggest for consideration that we examine that section at the proper time with a view to seeing whether or not it does properly cover the situation. At the present time no one can incorporate under the Companies Act with the word "investment trust" in the name, unless the Secretary of State should consider than company properly comes under such a classification.

Furthermore, the Secretary of State, having it in his discretion to grant or withhold permission to use the name, is entitled to see that such restrictions as are appropriate to the particular company are in its charter. Three or four years ago the Secretary of State may have required a certain type of restriction which he would not deem necessary to-day, and as time goes on other restrictions will be required. If the amendment is adopted, and as the Act will give the Secretary of State, if the amendment goes through, power to investigate these companies and see that the restrictions are being complied with, he will have the right to have the company wound up if they are not complying with the restrictions. It would appear to me, gentlemen, that a regulation of that kind which is under consideration in our amendment to the Companies Act would adequately govern the situation here, and much more suitably. That would leave the matter to the discretion of the Secretary of State. It is properly a company matter. Investment trust companies are not so distinct from other companies that they require special legislation. The Secretary of State keeps fully informed as to what kind of corporate organizations are required, and I feel that we are safe if we leave to him the discretion as to when it is proper to grant or to withhold the right to use the term "investment trust" and as to what restrictions are appropriate for insertion, according to the particular circumstances put before him and according to the practice with respect to investment trusts from time to time.

Hon. Mr. WEBSTER: Do you think this Bill would keep fresh capital out of the country?

Mr. COMMON: If this Bill becomes law, before the first annual meeting of that company is held, steps will have to be taken to wind it up, and at the first annual meeting the directors will have to go to their shareholders in England and on the continent, and say, "We are sorry, but owing to a radical change in the Company laws of Canada we find we cannot carry on there."

Hon. Mr. WEBSTER: What is the reputation of Canada to-day in Belgium, say, in regard to investments?

Mr. COMMON: I may say, gentlemen, it is only those who carry on business exclusively in the incorporation of companies, and who contact with those foreign interests, who are aware of the way in which Canada is regarded by foreign investors, and of the splendid advertising Canada is getting. Business is now international. People in Belgium are doing business in South America, people in Norway are doing business in the Antarctic regions, and so forth and so on, and holding companies are coming more and more into vogue. It is therefore necessary that those foreign investments should be centralized in some country which has stable laws and whose financial condition and governmental policy is sound. I have been present at meetings on the continent, in Belgium, where there were between 2,000 and 3,500 people present, and have heard addresses delivered to those people by members of the stock exchange, along thin line: "Gentlemen, what we are particularly considering to-day is a holding

company doing business in different parts of the world, and the question is where the holding company should be located. Owing to unstable financial conditions affecting some of the governments of Europe, it would seem desirable that this capital asset which is distributed over distant sections of the world should be located in a country with a reasonable taxation policy, whose government only collects such money as is necessary to the carrying on of government of the country, and is reasonably free from any growing radical spirit that may suggest capital taxes." And I have heard Canada strongly recommended for that purpose, as a country offering the protection of the British flag with all the guarantees of private rights that is supposed to carry; a country with up-to-date company laws; a country which is free from that radical spirit which all sound investors necessarily feel called upon to take into consideration. I speak of that as one instance, but I can tell you that my confrères and myself are in touch with lawyers and bankers in all the large financial centres of the world, and this consideration—protecting the foreign investors— is an inducement to locate companies in Canada.

While we may say these companies do not bring a tremendous advantage to Canada immediately, one thing is certain, and that is that Canada is becoming known to foreign capital. What Canada needs now is capital and immigration. As to the capital situation, there is abundant capital in the different countries of the world, most of which is not acquainted with Canada. If we can make it acquainted with Canada by proper means it seem inevitable, through this foreign capital becoming familiar with Canada, that we will receive a benefit. Some of it will eventually find its way into the development of Canadian industry, and for that reason as well as for others which have been mentioned, it would seem very important that we should carefully watch any change of our company or taxation laws in order that the movement that is now under way, and that is substantial, should not be discouraged but if anything should be encouraged. I thank you, gentlemen.

The Committee adjourned to meet after the sitting of the Senate.

The Committee resumed at 5 p.m.

The CHAIRMAN: When we adjourned we were dealing with Bill V-3, respecting Investment Companies. Are there any other gentlemen who would like to be heard on this Bill?

Mr. JOHN APPLETON: I represent the Dominion Mortgage and Investments Association. That association includes the preponderance of the trust companies doing business in Canada.

Hon. Mr. DANDURAND: You mean the old line trust companies.

Mr. APPLETON: Yes. The speakers who addressed you this morning used, quite frequently, the term "trust" when they were referring to what is known as the investment trust company. I merely want to refer to that to illustrate the confusion which arises from the use of the term "investment trust" when applied to companies who do not do a trustee business, but who do merely an investment business. Mr. Stairs, this morning, referred to the Royal Trust Company as having protested against the use of the term "trust" in the titles of investment trust companies, and left the impression that that particular company was not now concerned with respect to the use of that word on the titles of investment trust companies. I might point out, Mr. Chairman, that Mr. Jellett, the general manager of the Royal Trust company, is president of the Dominion Mortgage Investments association.

The CHAIRMAN: I do not think there is anything in this Bill under discussion regarding changing the name.

Mr. APPLETON: What I want to do is this, to impress upon the committee what we regard as being very important; that is, the elimination of the word "trust" from the title of investment companies. We think that the word "trust" should be reserved for the use of those companies which exercise trustee powers.

The first trust companies were organized in Canada about fifty years ago, and they have done a great work in building up their companies and accentuating the idea that a trust company was one which exercised trustee powers—acted as administrator and executor; and, as a result, the public in Canada have come to realize that any company with the word "trust" in it is a trustee company. We want to preserve that status for trust companies. We are not interested in other portions of the bill. I have no instructions from the association to discuss with the committee the other sections of the bill—just that part with respect to the use of the word "trust" and "trusts". If the Companies Act is amended, or if a new bill goes through, the trust companies would like the committee to provide that the word "trust" shall be applied only to those companies which exercise trustee powers. If the word "trust" is used, then the company using the word "trust" in its title should be subjected to inspection, and subjected to the regulations required in reports identical with the reports which trust companies have to make at the present time.

Hon. Mr. WILLOUGHBY: Might I ask if they have any trouble in England in connection with this matter?

Mr. APPLETON: In England I do not know of a company that uses the word "trust" company that exercises trustee powers. We have had confusion arising in Canada since the first investment trust company was incorporated, I think in the latter part of 1926. Our clientelle in Canada is very large. As the assets of the company aggregate two million dollars, our clients come to us, and usually say they have invested in another trust company; and that misapprehension and misconception was very, very general. In consequence of that, a deputation headed by Mr. Jellett, of the Royal Trust Company, waited upon Hon. Mr. Rinfret, Secretary of State, and the Minister of Finance, and asked that the Secretary of State issue no more charters to so-called investment trusts with the word "trust" in them; and we left with the impression that no more charters would be issued with that word in them. Our action was taken merely to remove the confusion which existed in the public mind.

Hon. Mr. WILLOUGHBY: Do they use the words "investment trust" in the old country?

Mr. APPLETON: No. There is no regulation providing as to titles that I know of in England.

Hon. Mr. MURPHY: Do they use the term?

Mr. APPLETON: They use the words "investment trust" in England, but there are a large number of companies which do precisely the same business which do not use the words "investment trusts".

Hon. Mr. WILLOUGHBY: It is used?

Mr. APPLETON: Yes.

Hon. Mr. HAYDON: What do the others use?

Mr. APPLETON: Stocks and Shares—Rubber Shares Limited.

Hon. Mr. HAYDON: Share companies.

Mr. APPLETON: Share companies. In the United States, the great majority of investment trusts do not use the word "trust" or "investment", and, in Ontario, a large number of investment trusts have been incorporated, but the Ontario statute forbids the use of the word "trust" in the titles. Nevertheless, they are being incorporated, and without the use of the word "trust".

In Quebec, there is a similar regulation; and our attention, in 1927, was called by the department to the fact that charters were issued by the Dominion Government with the word "trust" in them, and a good many of the applicants themselves made application to use the words "investment trust" and they were accommodated by the Secretary of State.

Hon. Mr. MURPHY: I was going to ask you whether, in the case of people who said they had invested in investment trusts, and when they were informed by your company in the matter—whether they withdrew their investments?

Mr. APPLETON: I cannot answer that specifically; but we have to explain to them the difference.

Hon. Mr. MURPHY: That is what I want to get at. To what extent does the confusion and misapprehension apply?

Mr. APPLETON: Very generally. Our clientelle——

Hon. Mr. MURPHY: After they found out the difference between the two companies, did they then withdraw from the company. From your statement it would appear they had invested under a misapprehension.

Mr. APPLETON: They had invested in the investment trust company under a misapprehension. They had invested in the investment trust company under the belief that it was a trust company; and I think it was a very natural mistake they were making.

Hon. Mr. MURPHY: They did not do anything further as far as you know, after the explanation was given?

Mr. APPLETON: No. Trust companies are very particular in instructing, because, naturally, they are consulted by a very large number of investors in the Dominion. That explanation was necessary, although it should not be necessary. That is the only question we desire to bring to the attention of the committee—the desirability of eliminating the word "trust" from the title of so-called investment trust companies or investment companies.

Hon. Mr. MCGUIRE: Are there companies in England which act solely as executors, known as trust companies?

Mr. APPLETON: I do not know of one. There is the public trustee; that is all. I might add that in the United States the trust company powers of the banks are very very minutely defined by state legislation.

The CHAIRMAN: If there are any other gentlemen who wish to speak before the committee, I would ask them to confine themselves to the subject.

Mr. G. G. HYDE, K.C., Montreal: I am against the principle of the Bill, because I see no reason for any special legislation against these investment companies. They are purely investment companies, as I understand the companies that are attacked. Now, practically every company that gets a charter or letters patent at Ottawa is given that power. It is the power under the provisions of section 32 of the Companies Act.

My special objection is in connection with the diversified standard securities of, let me say, a company that got letters patent out in 1927. This company is authorized as a trust company expressly by its charter to purchase and generally deal in various Standard Oil companies and their subsidiaries (provided that at no time shall more than ten per cent of the company's investments be placed in the securities of any one such company or subsidiary). I submit that if that power is taken away from them, that the people that they sell their shares to will be put in a false position. The people really have a contract that is made with them. This contract will be broken, I submit, by the action of Parliament, if this investment bill should go through.

Some reference has been made to the fact that inspection should take place by some government official. Under the terms of the provisions of the Companies Act, section 120 and following, an inspection can be made by the

Secretary of State at any time. I submit they can go ahead and examine and investigate or inspect the affairs of these companies. The auditors are required to under the Companies Act. They can make their report. I submit something could be added to the provisions concerning the duties of auditors which would require them to state that a company had interfered with any such requirements of its charter. I see no reason why the investment companies should be especially picked out for investigation or special legislation.

Hon. Mr. DANDURAND: The committee may desire to hear Mr. Finlayson, and put a few questions to him. He has had considerable to do with the drafting of this bill at the request of the committee. It may be that he has no special statement to make, but probably he would be willing to answer questions.

The CHAIRMAN: Mr. Finlayson is here, and he is able to answer any questions that may be asked in connection with this bill.

Hon. Mr. MURPHY: Before examining Mr. Finlayson, may I say that one of the gentlemen who addressed the committee this morning gave it as his considered opinion that this bill was invalid, and he added that if the Deputy Minister of Justice was brought before the committee he would sustain that opinion. Now, if that is the fact, would we not be proceeding to no purpose. I bring that point forward now to get your opinion whether Mr. Edwards should be our next witness; and, if that is agreed to, then why should we proceed?

Hon. Mr. DANDURAND: Mr. Finlayson may be in a position to give some data on this question.

Hon. Mr. MURPHY: I have no doubt; but Mr. Finlayson is not a lawyer.

Hon. Mr. DANDURAND: I think he knows fairly well.

Hon. Mr. MURPHY: Well, let us not lose sight of what this other gentleman said.

Hon. Mr. DANDURAND: We could have Mr. Edwards here at our next meeting.

Mr. G. D. FINLAYSON, Superintendent of Insurance: Honourable gentlemen, I may say I do not want to make any note of discord to the disapproval that is accorded this bill. I do not want to apologize for the bill or defend it. I have been asked to draw up a bill of this character, and I have done so to meet, so far as I could, what I conceived to be the wish of the committee; that is, to have a separate bill dealing with this class of company for the consideration of the committee and to provide the centre of discussion on this subject. I was not present at the meeting of the committee at which that suggestion was made, and so I had to act largely on the printed report of the proceedings. It was suggested that the bill should follow somewhat the same lines as the Loan Companies Act, the Trust Companies Act, and the Insurance Act; and, in putting together this bill, as you will see, I followed very largely the Loan Companies Act.

Two questions arise. One is apart from the principle as to whether it is desirable to deal in this way with this class of company. Assuming that that is admitted, two questions arise: Should anything of a regulatory character apply only to companies incorporated after this date, or should an attempt be made to extend its application, in whole or in part, to companies already incorporated? That very same question arose at the time the Loan Companies Act of 1914 and the Trust Companies Act of 1914 were enacted by parliament. Then, for the first time, the loan companies and the trust companies were brought under fairly detailed supervision, and the policy was adopted then of largely exempting existing companies from the application of those Acts. There was a clause inserted similar to what is now in the Companies Act, providing that the Minister of Finance might, in exceptional cases, order an inspection of a particular company.

Those Acts remained unamended for approximately ten years. During that period it was well known to ministers of Finance, and they have so stated, that there were companies that required investigation among the loan companies and the trust companies, but that, by reason of the invidious nature of the choice left to them, they were unable to order the inspection of a particular company, because it was felt that if the company were bad, the publicity given to this single inspection would probably hasten its downfall, and, if it were good, then an injustice was done that company by singling it out.

Hon. Mr. MURPHY: When you say "trust," do you mean investment trust companies?

Mr. FINLAYSON: No, sir; the real trust company, the fiduciary institution. So much was that so, that in 1920 both those Acts were amended by parliament, providing for a systematic detailed inspection of all loan and trust companies by the government department.

Now, I think it was the general opinion then that it would have been a very good thing if the substance of the amendment of 1920 had been incorporated in the original Acts of 1914. There are many people in this country, and some in others, who would have been saved considerable money if that had been done. So that, in considering this question now, it occurred to me whether it might not be well to be guided by our experience in those cases, and to provide for the very much larger application of this Act to existing companies if, and only if they are operating under the names which include the word "trust," and if they issue their debentures to the public.

The intention of this bill—it may not be carried out—is that the investment company which is not operating under the names including the name "trust company," and which is financing itself wholly by capital stock and not by debentures issued to the public, shall remain in possession of practically the same investment powers which it enjoys now under the Companies Act, and under the clause inserted.

Now, I do not say that is completely true; there are exceptions; but I think it is very generally true; and so far as their larger powers are concerned—the powers which they may exercise apart from investment—they remain in possession of those in their entirety.

Now, so far as criticism of the details of the measure went this morning, I am sure that those can all be very readily adjusted. Take, for instance, the question of the private company. Mr. Long was good enough to write me a few days ago about that, and I advised him that it was not the intention that this Act should apply to incorporated individuals or incorporated partners in issuing their securities to the public. I have also had some communications from the Investment Bankers' Association, and I have replied to them in the same way. I am sure that the question of the investment sections, which were criticized this morning, can also be adjusted. The limitation on investments permitted even to the companies operating under the word "trust" is not so very narrow as we might have supposed this morning. It does not exclude the Montreal Light, Heat and Power stock. Insurance companies are investing to-day—at least they did last year—in Montreal Light, Heat and Power stock. It is permitted under this bill. There is the limitation of four per cent, and there is the proviso which says that any company which pays a half million dollars in dividends in any way, qualifies the stock in that way. Most of the exceptions that have been taken can be explained in that way.

I am sure it is not necessary for me to deal with the constitutional aspect in the presence of constitutional lawyers. The same question was argued before committees of parliament in 1927 in connection with the amendment to the Loan Companies Act. I think the very same question arose then that would arise now. At that time I presented to the committee the written opinion of

the Deputy Minister of Justice who said, "It has not been a serious question in view of the decisions of the Judicial Committee, that the enactment of the provisions of 49 is strictly within the legislative competence of the Parliament of Canada."

As I say, I, perhaps, am more conscious of the imperfections of this bill than anyone else. I think the discussion this morning was very enlightening and very instructive. I am quite sure that further discussion will help in ironing out a lot of the objections.

Hon. Mr. MURPHY: I understand the Right Honourable Mr. Meighen would like the attention of the Committee for a moment.

Hon. Mr. BEIQUE: I would like to say a word before Mr. Meighen speaks. One of the parties suggested that this matter be dealt with by a special bill, and, although I appreciate the force of the criticism we have heard this morning and heard the other day, I haven't heard anything to change my opinion.

I was glad to hear the criticism this morning, and I am sure it will be the desire of every member of this Committee to see that, as far as possible, we do justice to those criticisms by amending the draft bill which has been prepared.

I rose especially to read, with the permission of the Committee, the opinion which expresses very clearly, and more clearly than I could, the opinion which I entertain on the question. It is an opinion which was published a few days ago in the *Montreal Star*. It must have been seen by a good many people. It is the opinion of Mr. Babson who is an American statistician of very great reputation. Here is what he says in connection with these companies:—

"The investment trust principle is fundamentally sound," says Roger W. Babson. "It is the same principle that underlies the insurance business. The insurance company spreads out its risks over a large group of people and depends on the law of averages to balance the gains against the losses. The investment trust spreads out its risk over a large number of securities and depends upon the same law.

"However, the soundest life insurance companies are those which most carefully select their risks, and similarly the soundest investment trusts are those which most carefully select the stocks or bonds that they buy. It is only logical that the insurance company insuring only the healthiest people will be in the long run, the most successful. It ought to be just as hard for sick securities to get into the portfolios of the investment trusts as it is for sick people to get life insurance with the best people.

SOME DANGERS

"For the most part the investment trusts seem to be capably managed and conservatively conducted. However, there are unquestionably a number of so-called 'investment trusts' that are not more than speculative pools. The primary purpose of the investment trust should be investment and not speculation. This does not mean that a trust must confine itself to the purchase of bonds alone, although a good back-log of bonds is a fine thing to have, whether held by an investment trust or by an individual. There are good, sound dividend paying common stocks which have prospects of a growth in value over a term of years. When, however, an 'investment' trust engages solely in the business of trying to make a quick profit in the market and disregards dividend yield on the securities bought it becomes a 'speculation' trust, or, in other words, merely an incorporated stock pool. There are examples of just this thing to-day.

"One striking illustration is an investment trust formed last year to hold only securities in one of our newer industries. Its income statement shows six months' profit of fifty thousand dollars. Three-fifths of this amount came from interest on call loans, one-fifth from interest on bank loans, and one-fifth from stock market profits on securities bought and sold during the year. None of the

income came from the industry itself. Trusts of this nature may be perfectly legitimate, but the public should know that it is buying shares of a speculative enterprise and not an investment.

" Publicity Desirable.

" Unless investment trust popularity is to receive a distinct set-back, and its growth retarded by coming into public disfavour, there must be full and truthful details published regarding their financial arrangements. One case has been recently cited where the promoters of the trust put in only sixteen per cent of the capital represented by preferred shares, and for that sixteen per cent received five per cent of the common stock in the form of a bonus. The public put in eighty-four per cent of the money by buying the first preferred stock and received a bonus of only twenty-five per cent of the common. In other words, the promoters risked one dollar to the public's five dollars, but the promoters got three-fourths of the equity and the public got one-fourth. Such abuses may be eliminated if the investment trust idea is to continue popular with the people and enjoy the growth which it deserves on a properly conducted basis.

" Many Advantages.

"The well-managed investment trust with thoroughly reliable sponsorship offers certain distinct advantages. In the first place it affords diversification for many small investors who are unable to purchase a widely enough diversified list of securities, but who can achieve the same purpose through purchase of trust shares. Second, it provides expert investment knowledge and management not ordinarily available to the small investor. From the standpoint of the financial situation as a whole the investment trusts can and do act as stabilizing influences during times of violent market fluctuations.

" Of course, the real test of the investment trust idea will come when we have a long continued decline in the security markets. Their ability to withstand temporary reaction of considerable violence has already been shown during the past month. It was a noticeable fact that the investment trust shares as a group acted extremely well in the recent market break. This, however, is not regarded as sufficient test to be conclusive.

" How to choose.

" The number of investment trusts has grown so rapidly in the past year that the average investor is bewildered by them. He cannot tell which ones merit his confidence. Three-quarters of them originate in New York state, and at present that state has not regulatory laws governing investment trusts. The best the average investor can do therefore, is to follow certain general rules.

"1. He should be assured that the personnel of the management has a good business reputation and consists of men with investment experience.

" 2. He should ascertain whether the officers and promoters have put enough money of their own into the trust so that they have a real interest in seeing that it is properly conducted.

" 3. He should know exactly what privileges have been accorded to the promoters, managers and officers, which are not enjoyed by the outside investor. If these are unreasonable he should avoid the shares.

"4. He should select only those trusts where periodic statements of financial condition, income and expenses, and balance sheet are made in detail.

" 5. He should assure himself that the cost of the management is not excessive, and that the expense of raising capital has not been out of proportion to the average cost of financing sound trusts of this kind.

" 6. He should bear in mind that the primary purpose of a real investment trust is 'investment' and not 'speculation' Those trusts which make extravagant claims about huge profits in a short time are to be avoided."

Those investment trusts, I think, are insterested in this country; but the good opinion which this country enjoys has to be preserved, and I think it is our duty to put our heads together and try to find the means, not of embarrassing trust investment companies in their operations or of preventing companies which have been formed having free action in their legitimite operation, but I think it is our duty to try to find a means to prevent foreign capital or Canadian capital being jeopardized by people who cannot properly manage, or have not the temperament of character to properly manage a number of these investment companies which may be formed. I think the necessity also arises from the fact that there is a great tendency on the part of almost everybody to speculate, and, as stated in the opinion I have read, I think that those investment trust companies are not companies for speculation. They should be companies to invest the funds that are entrusted to them.

I hope that the members of the committee will give all the attention deserved, not only to the draft bill, but to the representations which are made, in order to fully discharge the duties which are incumbent upon it.

Rt. Hon. Mr. MEIGHEN: Honourable gentlemen, I am very grateful for the opportuunity to impose upon you again in the few words I have to speak. I spoke briefly in the first instance, and I will try to reward your kindness by being very brief in this instance.

It was with extreme pleasure that I listened to the words of Senator Beique. I will respect his opinion on all occasions, but especially when it is endorsed by so eminent an authority as Roger Babson. Mr. Babson is a student of investments of high eminence in the world and has given a great deal of study to the whole subject of investment trusts. In the article read by Senator Beique he gave evidence of that study.

It will be observed that he made a series of recommendations after his exhaustive study—recommendations every one of which I endorse. But one recommendation he did not make was that there be any government interference, or attempt to regulate and supervise industrial trusts.

Hon. Mr. DANDURAND: But, he complained that in New York state there is no regulation.

Rt. Hon. Mr. MEIGHEN: Complained that there is no regulation?

Hon. Mr. DANDURAND: Yes.

Rt. Hon. Mr. MEIGHEN: Yes, but in his recommendations he does not say there should be. Furthermore, what must have been in his mind in regard to that complaint would be this: regulations to the extent of seeing to it that the objectives that he sets out in the article are met. Now what are they? The objectives, first of all, are fidelity of management and proper presentation to the buyer of what he is buying. When I spoke first I made very clear that although we did not like to be singled out for special treatment, so far as the companies I represent are concerned we have not the slightest objection to any regulation of that kind; but when regulation amounts to direction as to what we must invest in and what we must not, then we enter our firm, definite protest on principle on every ground that can be conceived. I have listened to Mr. Finlayson. I cannot help but note that in as far as the principle of this bill is concerned, in all that has been presented to-day there has been no one who has even brought evidence or attempted to state that there has been public demand for it. Naturally, I know that the public is not organized and does not send a representative as readily as does a specific concern; but if there were public demand, at least the newspapers are read, and we would see in our press indications of public uneasiness. We have not seen any. What I would like to answer chiefly is this: the aparent feeling that the investment trusts are in a special field close to the loan companies and close to trust companies, or

something akin to, and, therefore, that there should be special legislation regarding them in order that our reputation be protected through the financial and investing world.

I am not going to argue the point over again; but when the question of regulating loan companies, and singling them out so often came before parliament, being then a member, I took the ground that there was no cause for such regulation, that it was perilous to enter upon it, and that it involved parliament in a responsibility which parliament should not assume—that is, regulation to the extent of specifying what they should do with their funds. They do not occupy the post of trustees. It is true they are under contractual obligations as are insurance companies. Parliament may have felt that the loan companies are in a position to comply with these contractual obligations. They are not under the same kind of contractual obligations as insurance companies or trust companies. But I do not even go so far as to admit they are on the border line. I think they are clearly in a class of companies along with others. I do not know that there is particular objection on the part of honest loan companies to the Act. I fancy it has succeeded pretty well in eliminating additional competition, and, to that extent, they would be very pleased. But here is a company that has nothing akin to any of them at all. There is nothing in the world to distinguish investment trust companies from any other concern that borrows money. Nothing at all. For example, here is an oil company that starts up, quite legitimately we will say. It says, "We have a prospect in Turner valley. We have no oil. We are selling our shares. We are selling our debentures." This parliament says, alright. But if another company starts up which gives the additional protection, which says, "We will not ask our debenture holders or our shareholders to depend on the prospect of a single area or a single company, but we will surround them with a fortification and protection of a diversified mass of selling securities," then this parliament comes along and says, "No; get thee behind me; we will protect the investor from that kind of investment." Is that logical?

Now, just where the investor needs the assistance of parliament it is refused, but where he has the advantage of diversification parliament comes along and offers to help him. If any feature of this bill passes, that is just what is done; the investor is left to his own resources where most he needs help, and he is offered assistance by parliament where he does not need it, or, to put it more fairly, where he needs it far less. If there is to be any Blue Sky law—while I am not a lover of that kind of legislation and doubt very much the efficacy of attempts heretofore in force along that line—if there is to be any Blue Sky law, we will come under it the same as anybody else. We have no special right to exemption. But why should we, in the absence of any such legislation of a general character, be singled out—a class of business which is essentially the safest, granted average management, and that is all we can grant? Why should we be singled out, a class of business essentially the safest, safer than any other single industry in Canada?

But, I promised to be brief. I wanted to refer to the remarks of Mr. Appleton on the question of names. I am quite anxious to avoid confusion in the mind of the public on that point. Our investment trusts all have the name investment trusts. The question which Mr. Appleton presented was argued out at the time the name was granted. I am addressing myself to the wisdom of granting; but I do not want anybody to think that this question is involved in this bill. I think it is well, though, that the dominion should not get a prejudice against the action of the department in granting that. We might, of course, in Canada have refused the name "trust" to any company except that doing a purely trustee or fiduciary business. If we did, and denied the term "investment trust" to Canadian companies, we cannot deny it to British com-

panies; we cannot deny it to American companies if they are seeking investment in Canada, if they are competing with us. Their long-standing, their widespread activities have given the name a definite meaning in the investing mind. They would have a sweeping advantage over us. That would only force us, in a kind of negative position, to adopt some other name, less significant, a new name. Surely we can depend on the Canadian people to distinguish an investment trust from a trust company the same as in England. There are businesses and companies called investment trusts there and in the United States. Surely we can expect the Canadian people to be as intelligent as they. I have seen no evidence of confusion. We have not had a letter indicating confusion in two and a half years of operation. So that I do not think any criticism can come from the name having been used.

But is not that question closed so far as this bill is concerned? We have appealed; we have met objections; we have been granted the name, and because we have, are we now to be taken by the throat and strangled in our operations? It must be only as an indirect means of compelling us to change our name and thereby, I submit, place us under a handicap, and possibly—especially as we have it—it would be exceedingly serious indeed.

Therefore, the question of name does not come up; it is not involved in the bill at all. All those enjoying that name are to enjoy it and should be placed in the same category as any investment corporation. That, fundamentally, is what they are and what they intend to be. Now, it might be, as far as our companies are concerned, that the committee will say, "You are existing; we will not take away your powers; having granted you a charter that condition is fixed; we are not going to take them away and make it a scrap of paper; but, as to the future, we will do differently." That might help us; and it might help investment trust companies and all those companies that are fortunate enough to exist. Certainly, it would be of advantage to us. But it would not be right, and it certainly would not be in the public interest. I am not here arguing the public interest, now especially; but I do not believe the committee will deny the companies that are to exist the rights that are enjoyed by companies now existing, unless those rights are shown to be fundamentally wrong.

Now, I think I am through with all I have to say. I would add this thought. We ask for no privileges; we have no special rights; we are an investing and trading company; we have nothing in the way of special charter rights given us like the banks have, or like trust companies have—nothing at all. We ask for nothing. Therefore, let us not be disabled. It is true regulations are put in our charter. Surely it is not argued that is a foundation for the right of parliament to do it. It is done, and why? When we are appealing to certain classes of investors we put that formula in in order to reach that class of investor, and I submit we have just as good a right to say to our subscribers, "This is a common stock company, nothing more; it is not going to invest in anything but common stocks; you know it; if you are putting your money there, do so." What is this Parliament to say—that that class of investment trust must be excluded from Canada? For example, if a special oil investment trust must be excluded from Canada, Canadian money will go into the big oil investment trusts in New York. There are three or four of them now.

Some say there is a fever of speculation. So there is. But the investment trust is an avenue to satisfy that field, and if it is stopped and only one rigid loan company allowed, then investments will go into single things here, there and everywhere without the securities of an investment trust. Instead of reaching your goal, you are simply abolishing your goal and leaving the public to the mercy of very precarious companies.

The CHAIRMAN: I think that is all the evidence that is put before us to-day. What is the pleasure of the committee with regard to this bill?

Hon. Mr. DANDURAND: We could, perhaps, suspend consideration of the bill. I am not suggesting at this moment that we should refer it to some special committee. If there is any sentiment to that effect around this table, it might be expressed. I thought we could, perhaps, suspend consideration and think over it until next week. The sub-committee will study the Companies Act and we will have this present bill before the committee. Perhaps the committee might, at the same time, be thinking of the bill itself when examining the clauses, or the amendments, to the Companies Act.

The CHAIRMAN: This evidence will be in the hands of the committee.

Hon. Mr. DANDURAND: The evidence will be distributed. I am not proposing anything just now—either that it be sent to a special committee or to the sub-committee we have just appointed to study the amendments to the Companies Act. I suggest that we leave the bill before the committee to be taken up a little later on.

THE SENATE OF CANADA

PROCEEDINGS OF

THE STANDING COMMITTEE

ON

BANKING AND COMMERCE

COPIES OF PROVINCIAL LEGISLATION RESPECTING PROSPECTUSES AND OTHERWISE FOR THE PROTECTION OF THE PUBLIC

DIRECTED BY THE COMMITTEE TO BE PRINTED

OTTAWA
F. A. ACLAND
PRINTER TO THE KING'S MOST EXCELLENT MAJESTY
1929

ONTARIO

THE COMPANIES INFORMATION ACT, 1928

1928, Chapter 33

An Act Respecting Information Concerning Companies

Assented to 3rd April, 1928

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

1. This Act may be cited as *The Companies Information Act,* 1928, c. 33, s. 1. Short title.

2. In this Act,— Interpretation.

(*a*) "Company" or "corporation" shall include any public association, corporation, company, or other incorporated organization, whether acting as a trustee or not; "Company."

(*b*) "Syndicate" shall include any association, partnership, syndicate, or unincorporated organization, whether acting as a trustee or not; "Syndicate."

(*c*) "Security" shall mean security as defined in *The Security Frauds Prevention Act,* and regulations made thereunder. 1928, c. 33, s. 2. "Security."

3. (1) A prospectus containing such information as may from time to time be required by the Lieutenant-Governor in Council, verified as the Provincial Secretary may direct, together with the fee prescribed in the order in council, shall be filed with the Provincial Secretary by every company other than a private company and syndicate, Prospectus to be filed by companies and syndicates.

(*a*) upon the establishment in Ontario of a head or other office, and Ontario office.

(*b*) upon commencing any business in Ontario, or upon the sale in Ontario of any of its securities, and Doing business,—sale of securities.

(*c*) upon any material change in any fact set forth in the last prospectus filed, and Change in facts.

(*d*) upon the sale in Ontario of any issue of securities or any part thereof other than that in respect of which a prospectus has been filed. New issue.

(2) Upon default in the filing of any such prospectus for a period of more than ten days after it should have been filed under subsection 1, each director and officer of the company and each promoter of the syndicate, and any person acting as a representative in Ontario of an extra-provincial company or syndicate shall be liable upon summary conviction to a penalty of $20 for each day of such default, and in default of payment thereof to imprisonment for a term not exceeding three months. Penalty.

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Exceptions as to companies taxable under Rev. Stat. c. 29.

(3) This section shall not apply to corporations liable to payment of tax under section 3 of *The Corporations Tax Act* or to an insurer licensed under *The Insurance Act*, except where such corporation or insurer is selling its treasury stock in Ontario either directly or through any person or company. 1928, c. 33, s. 3.

Rev. Stat. c. 222.

Annual return of the corporation.

4. (1) On or before the 1st day of February in each and every year without notice or demand to that effect, every corporation incorporated under the laws of Ontario, and every other corporation having its head or other office or doing business or any part thereof, in the Province of Ontario, shall unless a corporation liable to payment of taxes under section 3 of *The Corporations Tax Act*, or unless an insurer licensed under *The Insurance Act*, make out, verify and deliver to the Provincial Secretary as hereinafter required, a detailed return containing as of the 31st day of December next preceding, correctly stated the following information and particulars:

Contents of return.

(*a*) The name of the corporation;

(*b*) The jurisdiction under the laws of which the corporation was incorporated;

(*c*) The manner in which the corporation is incorporated whether by special Act, or by letters patent or otherwise, and the date thereof;

(*d*) Whether the existence of the corporation is limited, by statute or otherwise, and, if so, the period of its existence yet to elapse, and whether its existence may be lawfully extended;

(*e*) Whether the corporation is a valid and subsisting corporation;

(*f*) A concise and general statement of the nature of the business or objects of the corporation;

(*g*) The names, residences and post office addresses of the president, secretary, treasurer, director, and manager of the corporation:

(*h*) The name and post office address of the chief officer or manager in this Province;

(*i*) The location of the head office of the corporation, giving the street and number when possible;

(*j*) The location of the principal office in Ontario where the head office is situated outside of Ontario;

(*k*) The date upon which the last annual meeting of the corporation was held;

(*l*) The amount of the bond or debenture debt of the corporation;

(*m*) A detailed statement of the real estate owned by it situated within the Province, where situate and the value thereof;

If share capital.

And in the case of a corporation having share capital, in addition:

(*n*) The amount of the capital stock of the corporation, and the number of shares into which it is divided;

(*o*) The number of shares issued and allotted and the amount paid thereon;

(*p*) The par value and if without par value, then the market value, or if there be no market value, the actual value of its shares of stock;

(*q*) The total amount of shares issued as preference shares;

(*r*) The total amount paid on such shares;

(*s*) The total number and amount of share warrants and the names, residences and post office addresses of the persons to whom the same were issued;

(*t*) The number of shares, if any, issued as consideration for any transfer of assets, goodwill, or otherwise, and the extent to which same are paid; if none are so issued, this fact to be stated;

(*u*) Such other information as may be required by order-in-council, a copy of which order-in-council shall be published in the *Ontario Gazette*.

If a mining company.

If the corporation is a mining company to which Part XI of *The Companies Act* is made applicable: Rev. Stat. c. 218.

(*v*) The number of shares sold or otherwise disposed of at a discount or premium;

(*w*) The rate at which such shares were sold or disposed of;

(*x*) Whether a verified copy of the by-laws, if any, providing for the sale of shares at a discount or otherwise was sent to the Provincial Secretary;

(*y*) The date or dates upon which such by-laws, if any, were passed and confirmed.

Posting of annual return.

(2) A duplicate of such return with the affidavit of verification shall be posted up in a conspicuous position in the head or principal office in Ontario of the corporation on or before the 2nd day of February in each year, and may be inspected by any shareholder or creditor of the corporation; and the corporation shall keep the same so posted until another return is posted up under the provisions of this Act.

Verification thereof.

(3) The return of every corporation shall be verified by the affidavit of any two of the directors of the corporation.

Transmission to Provincial Secretary.

(4) The return so verified shall, on or before the 10th day of February next after the time hereinbefore prescribed for making the return, be transmitted to the Provincial Secretary, together with the fee prescribed by order-in-council.

Penalty of default.

(5) If a corporation makes default in complying with the provisions of this section, every director and officer of the corporation, and any person acting as a representative of an extra-provincial corporation shall be liable upon summary conviction to a penalty of $20 for each day of such default and in default of payment thereof to imprisonment for a term not exceeding three months.

Corporations incorporated before July 1st, 1907, etc. 7 Edw. VII, c. 34.

(6) Corporations incorporated before the 1st day of July, 1907, under any Act repealed by *The Ontario Companies Act, 1907*, except chapter 191 of the Revised Statutes of Ontario, 1897, and Acts consolidated therewith for which that Act was substituted, shall make such returns under this section as are required from corporations without share capital.

Provincial Secretary may enlarge time.

(7) The Provincial Secretary may at his discretion and for good cause enlarge the time for making and delivering any such return.

Transfer to or by corporation in arrears not to be registered.

(8) No registrar of deeds or land titles officer shall register any instrument made by or in favour of, or purporting to confer any interest in land, whether by way of caution, certificate or otherwise, upon any corporation regarding which he shall have received notice

in writing from the Provincial Secretary that such corporation is in arrears in respect to any such return or any tax or fee payable with such return. 1928, c. 33, s. 4.

Provincial Secretary may require returns.

5. The Provincial Secretary may at any time by notice require any company to make a return upon any subject connected with its affairs within the time specified in the notice, and upon default in making such return the directors of the company and any person acting as a representative of such company in Ontario shall be liable upon summary conviction to a penalty of $20 for each day of such default, and in default of payment thereof to imprisonment for a term not exceeding three months. 1928, c. 33, s. 5.

Commencement of Act.

6. This Act shall come into force on a day to be named by the Lieutenant-Governor in his proclamation. 1928, c. 33, s. 6.

18 GEO. V. (ONT.), c. 34

AN ACT FOR THE PREVENTION OF FRAUD IN CONNECTION WITH THE SALE OF SECURITIES

His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title.

1. This Act may be cited as *The Security Frauds Prevention Act, 1928.*

Interpretations.

2. In this Act—

"Broker."

(*a*) "Broker" shall mean every person other than a salesman who engages either for the whole or part of his time directly or through an agent in the business of trading in securities and shall include such officials of a company or partnership which trades in securities as may be designated by the Regulations.

"Company."

(*b*) "Company" shall include any association, corporation, company or other incorporated organization, whether acting as a trustee or not.

"Fraud."

(*c*) "Fraud," "fraudulent" and "fraudulent act" shall, in addition to their ordinary meaning, include:

(i) any intentional misrepresentation by word, conduct or in any manner of any material fact either present or past, and any intentional omission to disclose any such fact;

(ii) any promise or representation as to the future which is beyond reasonable expectation and not made in good faith;

(iii) any fictitious or pretended trade in any security;

(iv) the gaining or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or profit so large and exorbitant as to be unconscionable and unreasonable;

(v) generally any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser of any security as to the nature of any transaction or as to the value of such security;

(vi) the making of any material false statement in any application, information, material or evidence submitted or given to the Attorney-General, his representative or the Registrar under the provisions of this Act or the Regulations; or in any prospectus or return filed with the Provincial Secretary;

(vii) the violation of any provision of this Act or of the Regulations relating to the manner in which brokers or salesmen shall trade in securities and anything specifically designated in the Regulations as coming within the meaning of this definition;

(viii) any artifice, agreement, device or scheme to obtain money, profit or property by any of the means hereinbefore set forth or otherwise contrary to law.

(*d*) "Person" shall mean an individual, partnership, association, syndicate and any unincorporated organization whether acting as a trustee or not. "Person."

(*e*) "Registrar" shall mean the person appointed by the Lieutenant-Governor in Council to act as Registrar under the provisions of this Act and the Regulations. "Registrar."

(*f*) "Regulations" shall mean the regulations made from time to time by the Lieutenant-Governor in Council under the provisions of this Act. "Regulations."

(*g*) "Salesman" shall mean every person employed, appointed or authorized by any broker or company to trade in securities whether directly or through sub-agents. "Salesman."

(*h*) "Security" shall, subject to the provisions of subsection 3 of section 3, include any document or instrument commonly known as a security, every documentary evidence of indebtedness or evidence representing or secured by some title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company, evidence of membership in an association of heirs or evidence of any option upon a security and anything designated as a security by the Regulations. "Security."

(*i*) "Trade" or "Trading" shall, subject to the provisions of subsection 3 of section 3, include any disposition of, transaction in, or attempt to deal in, sell or dispose of a security or interest in or option upon a security for any valuable consideration whether the terms of payment be upon margin, instalment or otherwise, and any underwriting of any issue or part of an issue of a security, and any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing or specifically designated as "trade" or "trading" in the Regulations. "Trade."

(*j*) "Trustee" shall mean a person, or a company, as the case may be, executing a trust expressly created by or declared in an instrument in writing other than a will or court order or judgment, where such trust is to carry on any business or to secure the payment or repayment of money. "Trustee."

Part I.

REGISTRATION OF BROKERS AND SALESMEN.

Brokers, officials and salesmen to register.

3. (1) No person shall,—

(*a*) trade in any security unless he is registered as a broker or salesman, or

(*b*) act as an official of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he or the partnership or company is registered as a broker.

(*c*) act as a salesman of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he is registered as a salesman,

and such registrations have been made in accordance with the provisions of this Act and the Regulations, and any violation of this section shall constitute an offence.

Partnership or company may be registered.

(2) With the approval of the Attorney-General, any partnership or company may be registered as a broker, whereupon the partnership or company may trade in securities, and the members and officials of the partnership, and the officials of the company other than branch managers or salesmen of the partnership or company, may act as such without separate registration, and the provisions of this Act, and of the Regulations relating to registered persons or companies, shall be deemed to apply to such partnership or company.

Exemptions.

(3) Subsections 1 and 2 shall not apply to any person in respect of any of the following classes of trades or securities,—

Judicial sales.

(*a*) A trade in a security taking place at a judicial, executor's, administrator's, guardian's or committee's sale, or at a sale by an authorized trustee or assignee, an interim or official receiver or a custodian under *The Bankruptcy Act*, a receiver under *The Judicature Act*, or a liquidator under *The Companies Act* or *The Winding Up Act*.

R.S.C. cc. 11 213. (Dom.), Rev. Stat. cc. 88, 218.

Isolated transactions by owner.

(*b*) An isolated trade in a specific security by or on behalf of the owner, for the owner's account, where such trade is not made in the course of continued and successive transactions of a like character.

Banks, etc., Crown, municipal and public officials, and registered persons, etc.

(*c*) A trade where one of the parties is a bank, loan company, trust company or insurance company, or is an official or employee, in the performance of his duties as such, of His Majesty in right of the Dominion or any province or territory of Canada or of any municipal corporation, or public board or commission in Canada or is registered as a broker under the provisions of this Act.

Sale by pledgee for debt.

(*d*) A trade by or for the account of a pledgee or mortgagee for the purpose of liquidating a *bona fide* debt by selling or offering for sale or delivery in good faith in the ordinary course of business a security pledged in good faith as security for such debt.

Stock dividends, etc.

(*e*) The distribution, issuance or sale by a company exclusively to the holders of its securities of capital stock, bonds or other securities as a stock dividend or other distribution out of earnings or surplus, or in the process of a *bona fide* re-

organization of the company, or of additional capital stock where no commission or other remuneration is paid or given in connection therewith.

(*f*) The exchange by or on account of one company with another company of its own securities in connection with a consolidation, amalgamation or merger of either company. Exchange on merger.

(*g*) A trade in good faith by an actual prospector of security issued by him for the purpose of financing a prospecting expedition, or for the purpose of disposing of any of his interest in a mining claim or property staked by or wholly or partly owned by him. Prospector's "grubstake" or share in claim.

(*h*) Securities in which trust funds may lawfully be invested in Ontario. Trust.

(*i*) Bonds or notes secured by mortgage upon real estate or tangible personal property where the entire mortgage, together with all of the bonds or notes secured thereby are sold at the one time. Secured bonds.

(*j*) Negotiable promissory notes or commercial paper maturing not more than a year from the date of issue. Negotiable paper.

(*k*) Securities evidencing indebtedness due under contract made pursuant to the provisions of any statute of any province of Canada providing for the acquisition of personal property under conditional sales contracts. Securities based upon conditional sales.

(*l*) Securities issued by a person or company organized exclusively for educational, benevolent, fraternal, charitable, or recreational purposes and not for pecuniary profit, where no part of the net earnings thereof enure to the benefit of any security holder. Shares of non-profit-sharing companies.

(*m*) Any class of trade or security specifically exempted from the application of subsections 1 and 2 of this section by the Regulations. Trades or securities exempted by Regulations.

4. (1) Unless the Attorney-General otherwise directs the Registrar may within ten days after the receipt by him of any application for registration cause to be entered in a book kept for such purpose and open to public inspection, hereinafter called the "Register," the name and address for service of such applicant, whereupon such applicant shall be deemed to be registered as a broker or salesman as the case may be. Registration within ten days unless Attorney-General objects.

(2) The Registrar may upon the direction of the Attorney-General or his representative authorized in writing cause a temporary entry to be made, designated as such, in the register, subject to cancellation at any time upon the order of the Attorney-General. Temporary registration.

(3) Registrations shall expire, and may be changed or renewed as the Regulations shall provide. Expiration, change and renewal of registration.

5. (1) Every application under this Act or the Regulations shall be made in writing upon the forms provided by the Registrar, and shall be accompanied by the fee prescribed by the Regulations and such bond as may be required. Application to be upon forms with proper fees and bonds.

(2) Every applicant, whether domiciled in Ontario or not, shall state in every application an address for service in Ontario, and all notices under this Act or the Regulations and all legal process issued by or on behalf of any person or company shall be sufficiently served for all purposes if posted by registered mail to the applicant at the Address for service.

latest address for service so stated, and in the case of a non-registered company where the officials are registered to the latest address of the person registered as the senior official of such company in Ontario.

Further information.

(3) The Registrar may from time to time and shall when so directed by the Attorney-General require any further information or material to be submitted by any applicant or any registered person or company within a specified time limit and may require verification by affidavit or otherwise of any matter then or previously submitted.

$500 bond by every broker and applicant.

6. (1) Every applicant for registration as a broker shall before registration submit a bond by the applicant or the person or company he represents as the Registrar may require, such bond to be in the sum of $500 and in such form and upon such condition as the Regulations shall prescribe.

Bond by a surety company if required.

(2) The Registrar may and when so directed by the Attorney-General shall require any applicant or any registered person or company within a specified time limit to deliver a bond by a surety company approved by the Attorney-General in such form and upon such condition as the Regulations shall prescribe, and in such amount as the Regulations or the Attorney-General shall require.

New bond.

(3) The Registrar may and when so directed by the Attorney-General shall require a new bond of the kind mentioned in subsections 1 or 2 to be filed within a specified time limit.

Forfeiture of bonds.

7. (1) Any bond mentioned in section 6 shall be forfeit and the sum named therein shall become due and owing by the person or company bound thereby as a debt to His Majesty in right of the Province of Ontario when there has been filed with the Registrar the Attorney-General's certificate that the person or company in respect of whose conduct the bond is conditioned, or any official, employee or salesman of such company has, in connection with a trade in a security, been,—

$500 bond.

(*a*) in the case of the bond mentioned in subsection 1 of section 6,

(i) charged with any criminal offence, or,

(ii) found upon investigation by the Attorney-General or his representative to have committed a fraudulent act, or

Bond by surety company.

(*b*) in the case of the bond mentioned in subsection 2 of section 6,

(i) convicted of a criminal offence, or

(ii) convicted of an offence against any provision of this Act or the Regulations, or

(iii) enjoined by the Supreme Court or a Judge thereof otherwise than by an interim injunction.

Assignment of bond or payment of monies to creditors.

(2) The Attorney-General may assign any bond forfeited under the provisions of subsection 1, or may pay over any moneys required thereunder to any person, or to the accountant of the Supreme Court in trust for such persons and companies as may become judgment creditors of the person or company bonded, or to any trustee, custodian, interim receiver, receiver or liquidator of such person or company as the case may be, such assignment or payment over to be in accordance with and upon conditions set forth in the Regulations or in any special order of the Lieutenant-Governor in Council.

8. (1) The Attorney-General may order that,— Attorney-General's orders concerning applications.

(*a*) any application for registration, renewal or change of registration shall or shall not be granted for any reason which he may deem sufficient, or that

(*b*) the application of any person for registration shall not be granted where it appears that such person proposes to use or is using a trading name other than his own, or that of his partner, where such trading name is apt to lead the public to believe it is that of a business firm of longer established standing in Ontario, or is calculated to conceal from the public the identity of the applicant, or is for any reason objectionable, or that Deceptive names.

(*c*) any temporary entry in the register shall be made, suspended or cancelled for any reason which he may deem sufficient, or that Temporary entries.

(*d*) the registration of any person or company shall be suspended for any period or cancelled by reason of default in filing a bond when required under the provisions of subsections 2 and 3 of section 6, or that Suspension or cancellation for default.

(*e*) the registration of any person or company shall be suspended as provided in section 10, Suspension under Part II.

and no order of the Attorney-General shall be subject to review in any way in any court.

(2) The Registrar upon receiving any order of the Attorney-General suspending or cancelling any registration shall cause immediate entry thereof to be made in the register whereupon the suspension or cancellation shall become effective forthwith, but notice thereof and of the refusal of any application shall be sent to the person or company concerned. Entry or suspension or cancellation.

(3) Notwithstanding any order of the Attorney-General a further application may be made upon new or other material or where it is clear that material circumstances have changed. Further applications.

Part II

INVESTIGATION AND ACTION BY THE ATTORNEY-GENERAL

9. (1) The Attorney-General, or any person to whom as his representative he may in writing delegate such authority, may examine any person or thing whatsoever at any time in order to ascertain whether any fraudulent act, or any offence against this Act or of the Regulations has been, is being, or is about to be committed, and for such purpose shall have the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce documents, records and things as is vested in the Supreme Court or a Judge thereof for the trial of civil cases, save that no person shall be entitled to claim any privilege in respect of any evidence or document, record or thing, sought to be given or produced, on the ground that he might be incriminated or exposed to a penalty thereby. Investigation by Attorney-General.

(2) The failure without reasonable excuse of any person or company to furnish information required by the Registrar under Part 1 within the time limited, or the failure without reasonable excuse of any person summoned for examination under subsection 1 to Failure to give information, etc., an offence and also *prima facie* evidence.

appear or his refusal to give evidence, or to answer any question, or the failure without reasonable excuse or refusal of any person or company to produce anything where the evidence, answer or production would be required in an action shall constitute an offence and shall also be *prima facie* evidence upon which,—

(*a*) the Attorney-General, or his representative, may base an affirmative finding concerning any fraudulent act to which he may deem it revelant, or

(*b*) the Supreme Court, or a Judge thereof, may grant an interim or permanent injunction, or

(*c*) a police magistrate may base a conviction for an offence against this Act or the Regulations.

Evidence not to be disclosed.

(3) Disclosure by any person other than the Attorney-General, his representative or the Registrar, without the consent of any one of them, of any information or evidence obtained or the name of any witness examined or sought to be examined under subsection 1 shall constitute an offence.

Attorney-General may

10. If the Attorney-General or his representative upon investigation finds that any fraudulent act, or that any offence against this Act or the Regulations, has been, is being, or is about to be committed, the Attorney-General

suspend for over ten days

(*a*) may where a registered broker, company or salesman is in his opinion concerned therein, order that the broker, company or salesman and any other registered broker, company or salesman connected with the same organization, be suspended from registration for any period not exceeding ten days, or

and proceed by injunction.

(*b*) may where he considers a suspension for ten days inadequate, or where any unregistered person or company is in his opinion concerned in such fraudulent act or in such offence, proceed under the provisions of section 11, or, otherwise under this Act or the Regulations, or

Notice of fraud.

(*c*) may give notice of the fraudulent act to the public by advertisement or otherwise or to any individual by letter or otherwise, whenever he deems it advisable.

Supreme Court or Judge may enjoin from trading in securities.

11. (1) The Supreme Court or any Judge thereof is hereby empowered upon the application of the Attorney-General, where it is made to appear upon the material filed or evidence adduced that any fraudulent act, or any offence against this Act or the Regulations has been, is being or is about to be committed may by order enjoin,—

(*a*) any registered broker, company or salesman or any person of company implicated with any of them in the same matter from trading in any security whatever absolutely or for such period of time as shall seem just, and any such injunction shall *ipso facto* suspend the registration of any registered person or company named in the order during the same period, or

(*b*) any person or company from trading in any security whatever, or in any specific security, or from committing any specific fraudulent act or series of fraudulent acts absolutely or for such period of time as shall seem just.

(2) The application of the Attorney-General under subsection 1 may be made without any action being instituted, either,— Application may be *ex parte*

(*a*) by an *ex parte* motion for an interim injunction which shall, if granted, remain in full force for ten days from the date thereof unless the time is extended or the originating motion mentioned in clause *b* hereof is sooner heard and determined, or

(*b*) by an orginating notice of motion, which, if an interim injunction has been granted, shall be served within five and returnable within ten days from the date of such interim injunction. or by originating notice.

(3) Any information, evidence, exhibit or thing obtained by the Attorney-General or his representative or the Registrar under the provisions of this Act or the Regulations, or copies thereof, certified by the Attorney-General or the Registrar shall, so far as relevant, be receivable in evidence for all purposes in any action, proceeding or prosecution and, in proceedings under this section only, the evidence of a witness may be used against him notwithstanding anything in *The Evidence Act* contained. Evidence. Rev. Stat. c. 107.

12. (1) The Attorney-General may,— Attorney-General may order funds, etc., to be held.

(*a*) when he is about to examine or during or after the examination of any person or company under the provisions of section 9, or

(*b*) when he is about to apply for or has applied for or has obtained an injunction interim or otherwise against any person or company under the provisions of section 11, or

(*c*) where criminal proceedings which in his opinion are connected with or arise out of any security or any trade therein, or out of any business conducted by the accused are about to be or have been instituted against any person,

in writing or by telegram direct any person or company having in Ontario on deposit or under control or for safe keeping any funds or securities of the person or company so to be or actually examined, enjoined or charged, to hold such funds or securities in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the provisions of *The Bankruptcy Act, The Judicature Act, The Companies Act* or *The Winding Up Act,* or until the Attorney-General in writing revokes such direction or consents to release any particular fund or security from such direction, and failure without reasonable excuse by any person or company to comply with any such direction shall constitute an offence, provided that no such direction shall apply to funds or securities in a stock exchange clearing house nor to securities in process of transfer by a transfer agent unless such direction expressly so states, and in the case of a bank, loan or trust company the direction shall only apply to the offices, branches or agencies thereof named in the direction. Proviso.

(2) Any person or company in receipt of a direction given under subsection 1, if in doubt as to the application of such direction to any funds or security, or in case of a claim being made thereto by any person or company not named in such direction, may apply to the Supreme Court or a judge thereof who may direct the disposition of such fund or security and may make such order as to costs as may seem just. Application for direction.

May take bankruptcy proceedings, etc.

(3) The Attorney-General, whenever His Majesty becomes a creditor of any person or company in respect of a debt to the Crown arising from the provisions of sections 6 and 7, may take such proceedings as he shall see fit under *The Bankruptcy Act, The Judicature Act, The Companies Act* or *The Winding Up Act* for the appointment of an interim receiver, custodian, trustee, receiver or liquidator as the case may be.

R.S.C., cc. 11, 215. (Dom.), Rev. Stat. cc. 88, 218.

Part III

GENERAL PROVISIONS

Judge not *persona designata*

13. (1) A judge of the Supreme Court in exercising any of the powers conferred upon such judge by this Act shall be deemed so to act as a judge of such court and not as *Persona designata*.

nor Attorney-General.

(2) The Attorney-General shall in all proceedings under this Act or the Regulations be deemed to be acting as the representative of His Majesty in the right of the Province of Ontario, and not as *persona designata*.

Judicature Act and Rules apply Rev. Stat., c. 88.

(3) The provisions of *The Judicature Act* and the Consolidated Rules of Practice and Procedure made thereunder so far as they are applicable to proceedings of a like nature, including those relating to appeals and to the enforcement of judgments and orders, shall apply to every proceeding before the Superme Court or a judge thereof under the provisions of this Act, save that service of notices and other legal process shall be in accordance with subsection 2 of section 5 and save that costs may be awarded to but not against the Attorney-General.

No action etc., against persons administering this Act.

14. No action whatever, and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy shall lie or be instituted against any person whether in his public or private capacity or against any company in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the Regulations where such person is the Attorney-General or his representative, or the Registrar or where such person or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of the Supreme Court or a judge thereof made under the provisions of this Act.

Regulations, general powers.

15. The Lieutenant-Governor in Council may make and from time to time amend, alter or repeal regulations not inconsistent with this Act for the better carrying out of the provisions of this Act, for the more efficient administration thereof and for the prevention of fraud in trading in securities whether upon any stock exchange or elsewhere in Ontario, for the creation of offences, and for any other purpose elsewhere indicated in this Act, and all such regulations and any amendment, alteration or repeal thereof shall become effective in all respects as if enacted in this Act upon the publication thereof in the *Ontario Gazette*.

Penalties.

16.—(1) Every person who violates any provision of this Act or the Regulations designated as an offence, or who does any fraudulent act not punishable under the provisions of the Criminal Code of Canada, shall be liable upon conviction thereof under *The Summary*

Convictions Act to a penalty of not more than $1,000 for a first offence, nor $2,000 for a second or subsequent offence, and in case of either a first or a subsequent offence either in default of payment of any penalty imposed, or in addition to such penalty, to imprisonment for a term not exceeding six months. Rev. Stat. c. 121.

(2) The provisions of subsection 1 shall be deemed to apply *mutatis mutandis*, to any company save that the money penalties may be increased in the discretion of the magistrate to a sum not exceeding $25,000. Companies.

(3) No proceedings under this section shall be instituted except with the consent or under the direction of the Attorney-General. Consent of the Attorney-General required.

17. Section 17 of *The Audit Act* shall apply in respect of any legislative appropriation for the administration of this Act. Expenses. Rev. Stat. c. 25.

18. This Act shall come into force on a day to be named by the Lieutenant-Governor by his proclamation. Commencement of Act.

REGULATIONS MADE UNDER THE SECURITY FRAUDS PREVENTION ACT, 1928

Part I

DEFINITIONS

1. The interpretation provisions of the Act, as extended or amended from time to time by regulation, shall apply to these regulations. Interpretation sections of Act apply.

2. "Act" shall mean *The Security Frauds Prevention Act, 1928*. The Act.

3. "Non-brokerage" as applied to a company or unincorporated organization means that registration is sought to authorize trading in securities of its own issue and not general trading with the public in other securities. Non-brokerage.

4. "Official" wherever used in the Act and regulations shall include the president, vice-president, secretary, treasurer, general manager, department and branch office managers, and all other officers acting in a similar capacity whether so designated or not. Official.

5. "Security" in addition to the definition contained in clause (*h*) of section 2 of the Act shall, without in any way restricting the generality of such definition, include any bond, debenture, share, stock, note, unit, unit certificate, any participation certificate, certificate of share or interest, preorganization certificate or subscription, certificate of share or interest in a trust estate or association, profit-sharing agreement or certificate, certificate of interest in an oil, gas or mining lease, claim or royalty voting trust certificate, collateral trust certificate, income or annuity contract not issued by an insurance company, bankers' share, trustees' share, investment contract, investment participating bond, or investment trust debenture, bond, debenture, share, stock note, unit or certificate bond upon any security whether any of the foregoing relate to a person, proposed company or company as the case may be. Security.

Trade. Trading.

6. "Trade" or "Trading" in addition to the definition contained in clause (*i*) of section 2 of the Act, shall without in any way restricting the generality of such definition, include participation as a floor trader in any transaction in a security upon the floor of any stock exchange, and also any receipt by broker or salesman of an order to buy or sell a security, whether the order is received over the telephone or in person and whether the recipient receives such order as a broker or salesman or on behalf of a broker.

Part II

Exemptions

Exemptions

11. Subsections 1 and 2 of section 3 of the Act shall not apply to any person in respect to any of the following classes of trades or securities:

Securities sold at one time.

(1) Securities secured by mortgage upon real estate or tangible personal property where all of the securities secured thereby are sold at the one time.

Non-trading employees' transactions.

(2) Trades in securities which may occasionally be transacted by employees of a registered broker (whether individual, partnership or company) where such employees do not usually sell securities to the public and have been temporarily designated by the Registrar as "non-trading" employees, either individually or as a class.

Part III

Registration, etc.

Forms of applications.

12. The forms of application shall be as prescribed from time to time by the Registrar, and shall be printed in triplicate, each set being numbered, the various classes of forms being printed on paper of different colours as indicated below:

Broker (Brokerage), (Individual, partnership or company or official thereof).	Triplicate Blue	Form A
Broker (Non-brokerage) (Company, unincorporated organization or official of either).	Triplicate Brown	Form B
Salesman..	Triplicate Salmon	Form C

Forms of Bonds.

13. The bonds mentioned in subsection 1 of section 6 of the Act, hereinafter called "$500 bonds," and the bonds mentioned in subsection 2 of the said section, hereinafter called "surety bonds," shall be in Forms D and E respectively attached to these regulations, and shall be conditioned as therein set forth and printed in the sets and colours of paper indicated below:

$500 Bond..	Duplicate Gray	Form D
Surety Bond..	Triplicate Green	Form E

Request for forms.

14. Every request for registration shall be made by letter to the Registrar, enclosing a certified cheque, money order or postal note, made payable to the Provincial Treasurer of Ontario, for the fee, which shall be $5.00 in the case of a salesman whose employer is or is to be registered, and $25.00 in all other cases, and shall state whether registration is sought for brokerage trading as an individual, partnership, company or official thereof, or for non-brokerage trading, as a company, unincorporated organization, or official thereof, or for trading as a salesman, and the salesman shall also state the name and address of his employer and whether the employer has applied or will apply for registration.

Fees.

Return of forms.

15. The Registrar shall cause a receipt, together with proper forms, to be sent to every applicant forthwith, including in the case of every applicant other than a salesman, the $500 bond forms, and in the case of a salesman whose employer has not applied for registration or is in the opinion of the Registrar unlikely to do so, the surety bond forms, and the applicant shall when the application forms are completed and the bonds executed return to the Registrar the application in duplicate and an original bond.

Employers may ask for registration of employees.

16. Applicants for registration whose officials or employees must also be registered as brokers or salesmen may in the letter mentioned in Regulation 14 make application on behalf of such officials or employees, naming them, and may enclose a single cheque to cover all fees setting forth in the letter the amount paid by each, but the forms shall be completed by each official or employee.

Receipt of applications.

17. Application forms completed for registration shall be deemed to have been first received by the Registrar on the date of receipt stamped thereon in his office, and he shall forthwith send one of the duplicate applications to the Attorney-General, and satisfy himself that all questions have been properly answered and that any bond has been properly executed.

Registrations of.

18. (*a*) The Register shall consist of an alphabetically indexed book in which sheets may readily be inserted comprising four separate parts and indices, Part I and Part II being for brokers, Part III for salesmen and Part IV for suspensions and cancellations.

(*b*) In Parts I and II shall be entered the names of brokers or such officials as must be registered separately, together with the application number, the latest address for service and other matters, and where the person registered is an official, the name of the organization, partnership or company he represents and the name and address of the senior official in Ontario.

Salesman.

(*c*) In Part III shall be entered the name of each salesman, his application number, the name of his employer, the salesman's latest address for service, and other matters.

Suspensions and cancellations.

(*d*) In Part IV shall be entered the name of the broker or salesman whose registration is suspended or cancelled, the application number, the date of the order of suspension or cancellation, by whom it was made, and the termination of the suspension and the fact of such suspension or cancellation, shall also be indicated by writing the word "suspended" or "cancelled," as the case may be, in red ink opposite the name in the brokers' or salesmen's part of the Register, and upon the termination of such suspension all entries in the Register relating thereto shall be ruled out in green ink.

Temporary entries.

19. Where a temporary entry is authorized the proper particulars shall be entered in the Register, followed by a capital "T," which shall be ruled out in green ink when the entry is made a full registration.

Lists of officials and employers.

20. Where officials or salesmen of any registered broker also registered a complete list of such officials or salesmen with their application numbers shall be kept with the file of such registered broker and such list shall be kept up to date by the brokers employing them.

Files.

21. The application and other papers of each applicant shall be filed in accordance with the application number, and the name of every applicant, with the application number and of every partnership or company, non-brokerage or brokerage, of which an official is separately registered, with cross-references to the name of such official, shall be entered alphabetically in a general index book.

Disposition of fees.

22. The Registrar shall cause all cheques, money orders and postal notes to be deposited with the Provincial Treasurer daily to the credit of the Consolidated Revenue Fund.

Refunds.

23. The Registrar shall where any application is refused make a refund to the applicant of the amount of the fee which accompanied the application, but no refund shall be made where there has been a temporary registration.

Lapse of registration.

24. Registration under the Act shall lapse on the 31st day of October.

25. Every registered person or company shall apply by letter to the Registrar for,—

Changes.

(*a*) change in registration whenever any change takes place in the members of the partnership or directors or officials of the company set forth in the latest application form on record, giving full particulars of the change, and enclosing an alteration fee of $1 by certified cheque, money order or postal note, or for

Renewals.

(*b*) renewal of registration on or before the 21st day of October, giving full particulars of any change which there will be on the 31st day of October, in the facts set forth in the latest application form on record, and enclosing the proper fee as upon a first application,

and the Registrar shall cause such change in or renewal of registration to be made unless in his opinion such changes have or will have occurred as have altered or will alter the circumstances in respect of which registration was previously granted so materially that an entirely new application is required, in which case the Registrar shall so notify the applicant who shall thereupon proceed as if upon a new application, and a salesman who has changed his employer, shall always be required to make a new application.

Change of salesman's employer material.

Registration not to be advertised, etc.

26. No registered person or company shall hold himself or itself out as registered, either directly or indirectly, nor exhibit to any of the public any letter, receipt or copy thereof received from the Registrar, nor advertise the registration in any way, save to state to inquirers the name in which such registration stands and the number of the application form sent to the Registrar, and any violation of this regulation shall constitute an offence.

Designation of non-trading employee may be cancelled.

27. The Registrar may, with the approval of the Attorney-General or his representative, designate as "non-trading" any employee or class of employees of a registered broker (whether an individual, partnership or company) not usually selling securities to the public, but such designation shall be temporary only and shall be cancelled at any time as to any employee or class of employees whenever the Registrar or the Attorney-General or his representative is satisfied that any such employee or member of any such class of employees should be required to apply for registration as a salesman, whereupon notice thereof with proper application forms shall be sent to the employer.

$500 BOND UNDER THE SECURITY FRAUDS PREVENTION ACT, 1928

KNOW ALL MEN BY THESE PRESENTS, that I/we.. .. ..

.. ..

(insert the name of individual, partners)

(or company, as the case may be)

of the.. .. ..of.. .. ..in the.. .. ..of .. .., Obligor, am/are/is held and firmly bound unto His Majesty the King in the right of the Province of Ontario, Obligee, in the penal sum of Five Hundred Dollars ($500) to be paid to the said Obligee or to his heirs, successors or assigns, for which payment well and truly to be made, I/we/the said Company bind my/our/its sel , my/our heirs, executors and administrators [its successors and assigns] firmly by these presents.

SEALED with my our seal , and dated this.. .. ..day of .. ..19.. .

SEALED with the corporate seal of the Obligor, attested by the hands of its proper officers in that behalf, and dated this.. ..day of .. ..19.. .

WITNESS:

.. ..

NOW THE CONDITION of the above written obligation is such that if the said Obligor shall at all times hereafter well and truly comply with the provisions of the criminal law in force in the Province of Ontario and with the provisions of *The Security Frauds Prevention Act, 1928*, and the regulations made thereunder, and if the Obligor be not charged at any time hereafter with any criminal offence, nor be found by the Attorney-General of Ontario or his representative upon investigation under the said Act to have committed any fraudulent act, then the above written obligation shall

be void, but otherwise shall be and remain in full force and virtue, and shall be forfeit in the manner provided by the provisions of section 7 of the said Act.

SIGNED, SEALED AND DELIVERED
in the presence of

SURETY BOND UNDER THE SECURITY FRAUDS PREVENTION ACT, 1928

KNOW ALL MEN BY THESE PRESENTS, that.. .. ..

.. ..

(full corporation name)

.. ..

of the.. .. ..of.. .. ..in the.. .. ..of

.. .., is held and firmly bound unto His Majesty the King in the right of the Province of Ontario, in the penal sum of.. ..

.. .., to be paid to His said Majesty or to his heirs, successors or assigns, for which payment well and truly to be made, the said Company binds itself, its successors and assigns firmly by these presents.

SEALED with the corporate seal of the said Company attested by the hands of its proper officers in that behalf, and dated this.. .. .. ..

day of.. .. ..19. ..

WITNESS:

.. ..

NOW THE CONDITION of the above written obligation is such that if.. .. ..upon and after registration as a

.. ..under *The Security Frauds Prevention Act, 1928*, and Regulation made thereunder, shall at all times hereafter well and truly comply with the provisions of the criminal law in force in the Province of Ontario and with the provisions of the said Act and Regulations, and if the said.. .. ..

.. ..

be not convicted at any time hereafter of any criminal offence and if the said.. .. ..be not convicted at any time hereafter of any offence against any provision of the said Act or the Regulations, and if the said .. ..

.. ..be not enjoined under the said Act by the Supreme Court or a judge thereof, other-

wise than by an interim injunction, then the above written obligation shall be void, but otherwise shall be and remain in full force and virtue and shall be forfeit in the manner provided by the provisions of Section 7 of the said Act.

SIGNED, SEALED AND DELIVERED
in the presence of:

AN ACT TO AMEND THE SECURITY FRAUDS PREVENTION ACT, 1928

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

Short title

1. This Act may be cited as *The Security Frauds Prevention Act, 1929.*

1928, c. 34, s. 6, subs. 2, amended.

2. Subsection 2 of section 6 of *The Security Frauds Prevention Act, 1928,* is amended by inserting after the word "Attorney-General" in the fourth line the words "or any other bond."

1928, c. 34, s. 7, amended.

3. (1) Section 7 of the said Act is amended by adding thereto the following subsection:

Forfeiture upon bankruptcy or winding up proceedings.

(1*a*) Any bond mentioned in section 6 shall be forfeit and the sum named therein shall become due and owing by the person or company bound thereby as a debt to His Majesty in right of the Province of Ontario when there has been filed with the Registrar a certificate signed by the Attorney-General that proceedings by or in respect of the person or company in respect of whose conduct the bond is conditioned have been taken,—

(*a*) under the *Bankruptcy Act,* or

(*b*) in the case of a company, by way of winding up.

1928, c. 34, s. 7, subs. 2, amended.

(2) Subsection 2 of the said section is amended by deleting the words "subsection 1" in the second line and substituting therefor the words "subsection 1 and 1*a*."

1928, c. 34, s. 8, subs. 1, amended.

4. Subsection 1 of section 8 of the said Act is amended by adding thereto the following clause:

Permanent entries.

(*bb*) any permanent entry in the register shall be cancelled upon,—

(i) any proceedings being taken by or in respect of the registered person or company under the *Bankruptcy Act* or in the case of a registered company, by way of winding up, or

(ii) suspension from any stock exchange of any registered person or the representative upon any stock exchange of any registered company.

1928, c. 34, s. 12, amended.

5. Section 12 of the said Act is amended by adding thereto the following subsection:

Notice to Registrars of Deeds or Masters of Titles.

(2a) In any of the circumstances mentioned in clauses (a), (b) or (c) of subsection 1, the Attorney-General may in writing or by telegram notify any Registrar of Deeds or Master of Titles or any Local Master of Titles or any Mining Recorder that proceedings are being or are about to be taken which may affect land or mining claims belonging to the person or company referred to in the said notice which notice shall be registered against the lands or claims mentioned therein and shall have the same effect as the registration of a certificate of *lis pendens,* save that the Attorney-General may in writing revoke or modify such notice.

1928, c. 34, s. 16, amended.

6. Section 16 of the said Act is amended by adding thereto the following subsection:

Apportionment of penalty on company among officers, etc.

(2a) Where any company is convicted under this Act the magistrate may direct that, in default of payment of the penalty imposed, proportionate parts thereof shall be paid by such officers, directors, officials or employees of the company, and in such amounts as he shall designate, and in default of payment by any person so designated the magistrate may impose a penalty of imprisonment for a term not exceeding six months.

1928, c. 34, amended.

7. The said Act is further amended by adding thereto the following section:

Collection of costs of investigation.

16a. Where in consequence of an investigation under Part II of this Act, any person or company has been,—

(a) convicted of a criminal offence; or

(b) convicted of an offence against any provision of this Act or the Regulations; or

(c) enjoined by the Supreme Court or a judge thereof otherwise than by an interim injunction,

the Attorney-General may certify in writing as to the costs of the investigation and shall be entitled to take such proceedings as are available to a judgment creditor for the collection from such person or company of the sum set forth in such certificate, which sum shall be a debt to His Majesty in right of the Province of Ontario.

1928, c. 34, amended.

8. The said Act is further amended by adding thereto the following sections which shall constitute Part IV of the said Act.

PART IV.

AUDIT, ACCOUNTS, INFORMATION.

Interpretation "Brokers' Auditor."

19. (1) In this Part:

(a) "Brokers' Auditor" shall mean an accountant whose name is on the panel of accountants approved by an executive committee.

(*b*) "Exchange Auditor" shall mean an accountant other than a brokers' auditor and not in any way connected with a brokers' auditor and who is employed upon full time by an executive committee. "Exchange Auditor."

(*c*) "Executive Committee" shall include the board of directors, managing committee or other governing committee of a stock exchange in Ontario. "Executive Committee."

(2) Any executive committee may from time to time select a panel of accountants each of whom shall have practised as such in Ontario for not less than five years, and shall be known as a brokers' auditor, and may also employ an exchange auditor. Panel of brokers' auditors. Exchange auditor.

(3) The executive committee shall allot to each brokers' auditor the persons or companies, whether members of or represented upon the exchange, which are to be audited by him, and all of the expenses of every audit are to be paid to the brokers' auditor by the executive committee, subject to full repayment forthwith by the person or company audited, and until such repayment is made the executive committee shall have a lien upon the seat belonging to or controlled by the person or company so indebted to the executive committee. Allotment of audits.

(4) Every brokers' auditor shall at least twice in each year make a complete audit of the business and affairs of each person or company allotted to him, such audit to be made at irregular intervals, supplemented by such partial audits as the auditor may deem advisable or the executive committee may direct, but no warning or notice shall in any way be given of any such whole or partial audit. Duties of auditor.

(5) The executive committee of a stock exchange may at any time require any brokers' auditor upon the panel of accountants of the exchange to make any general or special audit or report upon the whole or any aspect of the business or affairs of any person or company who is or has been a member of or in any way represented upon the exchange. Special audit.

(6) Every brokers' auditor, for the purpose of any audit under the provisions of this section shall be entitled to free access to all books of account, securities, cash, documents, bank accounts, vouchers, correspondence and records of every description of the person or company being audited, and any person or company withholding, destroying, concealing or refusing to give any information or thing reasonably required by the auditor for the purpose of his audit, shall be guilty of an offence. Powers of auditors.

(7) Every brokers' auditor during or upon the completion of every audit under the provisions of this section shall send a copy of every report whether interim or final to the exchange auditor and shall in addition specially report to such auditor any particular information which may be required under the by-laws, rules or regulations of the exchange and any further information which the brokers' auditor deems it to be in the public interest so to report, and the exchange auditor shall summarize all information so received, and report thereon to the executive committee for Auditors' reports.

scrutiny, identifying the person or company affected thereby by number only until the executive committee decides to take action in respect of any such person or company.

Power to examine.

(8) Any person designated in writing by an executive committee may examine under oath any member of the exchange or any officer of any company represented thereon, or any associate or employee of any such person or company upon any matter arising out of any report of a brokers' auditor and for the purposes of such inquiry the person so designated shall have all the powers which may be conferred upon a commissioner under *The Public Inquiries Act*.

Change of accounting system.

(9) Any executive committee may in writing, require any person or company whose affairs have been audited or are being audited to alter, supplement or replace any system of book or record keeping in any manner.

Failure to comply.

(10) Failure by any person or company, a member of or represented upon any stock exchange, to comply with any requirement of the executive committee of the exchange, or any person designated by it under subsection 8 hereof, shall constitute an offence and shall entitle the executive committee to suspend such person or member representing such company for such period as the said committee shall determine.

No action against auditors, etc.

(11) No action shall lie against any executive committee or any member thereof, or any person designated by it under subsection 8 hereof, or against any brokers' or exchange auditor in respect of any act or proceeding, under the provisions of this section.

Commencement of Act.

9. This Act shall come into force on the day upon which it receives the Royal Assent except clause *b* of subsection 1 of section 19 as enacted by section 8 hereof, which clause shall come into force on a day to be named by the Lieutenant-Governor by his proclamation.

QUEBEC

REVISED STATUTES OF QUEBEC 1925, CHAPTER 228, THE SECURITY SALES ACT

Chapter 228

An Act Respecting the Issue and Sale of Shares, Bonds and other Securities*

1. This act may be cited as the Securities Sale Act. Short title.

Division I

INTERPRETIVE

2. (1) The word " company " as used in divisions I, II and III of this act means: Meaning of word "company."

(*a*) All corporations and joint stock companies incorporated after the 23rd of May, 1924 (the date of the coming into force of the act 14 George V, chapter 64), by or under an act of the Legislature of this Province, authorized by their charter or by the general law to issue shares or bonds;

(*b*) Corporations and companies incorporated after the 23rd of May, 1924, in any way whatsoever, by or under an act of the Legislature of another province in Canada, or of a foreign country.

2. In this act, unless the context requires another interpretation, the word " bond " includes both bonds and debenture stock; the word " share " includes all kinds of shares and share warrants. "Bond." "Share."

3. This act shall not apply to,—

(*a*) any bonds or shares issued by a corporation or company whose shares or bonds are listed upon any incorporated stock exchange in Canada, or upon the Exchange (Bourse) of Paris, London or New York; Not applicable.

(*b*) any issue of shares or bonds by any company in favour of its shareholders or bondholders, or in favour of its promoters, or of those whom they represent or for whom they act, as dividends or as division of profits or upon a reorganization or upon any new issue whatsoever; nor to any issue of shares by a company, as partial or total payment for the acquisition of moveable or immoveable property; nor to any sale of shares or bonds made judicially or by an executor, an administrator, a sequestrator, an official receiver, a guardian, or a trustee appointed under judgment of a court; Where not applicable.

* This act came into force by proclamation of the 23rd of May, 1924, Official Gazette for 1924, p. 1682.

(*c*) any isolated sale of any security by the owner thereof or his representative, for the owner's account, such sale not being made in the course of repeated and successive transactions of a like character by such owner or on his account by such representative, and such owner or representative not being the underwriter of such securities. R.S. 6119f; 14 Geo. V, c. 64, s. 1; 15 Geo. V, c. 67, s. 1.

Division II

ISSUE AND SALE OF BONDS

Obligation to transmit documents.

3. No company may issue, sell, offer for sale or otherwise dispose of, in any manner, directly or indirectly, through an officer, an agent or any person, its bonds in this Province, unless it has previously transmitted, to the Provincial Secretary, the following documents:

Copy of charter, etc.

(1) A copy of its charter, of its articles of association or of any other act or document incorporating it, as well as of all supplementary letters patent, if any, certified to be true copies by the officer having the custody of the originals of such documents;

Copy of by-law ordering issue and sale; contents and certification thereof.

(2) A copy of the by-law of the directors of the company, ordering the issue and sale of such bonds, showing the date of the passing of the by-law by the directors, the date of the shareholders' meeting at which the by-law was approved, the number of shares held or represented by the shareholders present at such meeting and by the shareholders who have voted in favour of the by-law, the aggregate amount of the proposed issue of bonds, the number and par value of such bonds, the rate of the interest they shall bear, the date of their maturity and the description of the moveable and immoveable property to be given in security, if any, with a statement of the value of such properties. Such copy of the by-law must be certified to be a true copy by the president or vice-president and the secretary of the company, and bear the company's seal;

Copy of estimate, prospectus, etc.

(3) A copy of every estimate and prospectus and of every other representation in writing made by the company or upon its instructions, containing a statement of the profits likely to be realized;

Certified and sworn statement.

(4) A statement certified by the auditor of the company and sworn to by two of the directors, showing:—

Contents.

(*a*) The number of shares, if any, fixed by the by-laws, to qualify as a director, and the conditions determined by the by-laws of the company for the remuneration of the directors;

(*b*) The names, callings and addresses of the directors, and their salaries, if any;

(*c*) The cash on hand;

(*d*) The aggregate amount of the claims of the company, showing the aggregate amount of those doubtful of realization;

(*e*) The claims of the company against the directors, officers and shareholders, respectively, as well as their claims against the company, showing the amount and nature of such claims —the balance due by the shareholders upon the shares not fully paid up may be indicated by a lump sum;

(*f*) Merchandise on hand and its value;

(*g*) Disbursements made for future operations;

(*h*) The moveable and immoveable property, and the value thereof;

(*i*) The goodwill, grants, patents and copyrights, trade-marks, leases, contracts and permits;

(*j*) The debts of the company, secured by hypothecs or other charges on the property of the company, setting forth such securities and the names of the creditors;

(*k*) The aggregate amount of the unsecured debts of the company; the name of the creditor and the nature of each debt to be indicated when the debt is the result of any operation outside of the ordinary course of the company's business;

(*l*) The amount of common shares, subscribed for and allotted, and the amount paid upon such shares, indicating in what proportion such shares were issued for services rendered, commissions or purchase of assets, since the organization of the company;

(*m*) The amount of preferred shares, if any, subscribed for and allotted, and the amount paid on such shares, indicating in what proportion such shares were allotted for services rendered, commissions or purchase of assets, since the formation of the company;

(*n*) The indirect and conditional obligations, and their value;

(*o*) The previous issues and sales of bonds, if any, with all details of such issues and sales;

(*p*) The amount to be deducted for depreciation of the stock-in-trade and of any property of the company;

(*q*) The total amount of share warrants issued;

(*r*) The names and addresses of the auditors of the company's accounts. R.S. (1909), 6119g; 14 Geo. V, c. 64, s. 1.

Division III

ISSUE AND SALE OF SHARES

Obligation to transmit documents.

4. No company shall issue, sell, offer for sale or otherwise dispose of in any manner, directly or indirectly, through an officer, agent or any person, any share of its capital stock, unless it has previously transmitted to the Provincial Secretary, the following documents:—

Copy of charter, etc.

(1) A copy of its charter, of its articles of association or of any other act or document incorporating it, as well as of all supplementary letters patent, if any, certified to be true copies by the officer in charge of the originals of such documents;

Copy of by-law ordering issue and sale; contents and Certification thereof.

(2) A copy of the by-law of the directors of the company ordering the issue and sale of such shares, indicating the date of the passing of the by-law by the directors, the total amount of the proposed issue, the number and complete description of such shares, including the privileges affecting any such shares. Such copy of the by-law shall be certified to be a true copy by the president or vice-president and the secretary of the company, and shall bear the company's seal;

Copy of estimate, prospectus, etc.

(3) A copy of every estimate and prospectus and of every other representation in writing made by the company or upon its instructions, containing a statement of the profits likely to be realized;

Certified and sworn statement.

(4) A statement certified by the auditor of the company, and sworn to by two of the directors, setting forth:

Contents.

(*a*) The names, callings, and addresses of the persons who applied for the incorporation, the number of shares subscribed for by each of them, and the nature and extent of the interest of each of the subscribers in the property and profits of the company;

(*b*) The number of shares, if any, fixed by the by-laws, to qualify as a director, and the conditions fixed by the by-laws of the company for the remuneration of directors;

(*c*) The names, callings, and addresses of the directors or proposed directors, stating their salaries, if any;

(*d*) The minimum subscription required before the directors may proceed to allot shares, and the sum to be paid upon subscribing and that upon allotment; and, in the event of a second issue or a subsequent issue of shares, the amount offered for subscription at each previous allotment in the two preceding years, as well as the amount actually alloted and the instalments, if any, paid on the price of the shares so alloted;

(*e*) The number and amount of shares and bonds which within the two preceding years have been issued or agreed to be issued, as fully or partly paid up otherwise than in cash; and, in the latter case, the statement must show to what extent these shares or bonds were so paid up, and in both instances, the consideration for which the issue of the shares or bonds was made or proposed;

(*f*) The names and addresses of the vendors of any property, acquired by the company or which it intends to acquire, which is to be paid for, wholly or partly, out of the proceeds of the proposed issue, or whose acquisition was not completed at the date of the proposed issue, but which is proposed to be paid for out of such proceeds, and the sum payable to the vendor in cash, shares or bonds, and, if there be more than one vendor, or if the company be a sub-purchaser, the sum payable to each vendor; provided that if the vendors are a firm they shall not be treated as separate vendors;

(*g*) The amount, if any, paid or payable as the purchase price in cash, shares or bonds, for the purchase of any property, as above mentioned, specifying the amount, if any, allowed for goodwill;

(*h*) The amount, if any, paid during the two preceding years or payable, as commission, for the placing or subscription of shares or bonds of the company, and the rate of such commission; but it shall not be necessary to mention the commissions payable to those who have dealt with sub-underwriters;

(*i*) The amount or estimated amount of preliminary expenses;

(*j*) The amount paid within the two preceding years or to be paid to any promoter, and the consideration for any such payment;

(*k*) The date of every material contract, with the names of the contracting parties, and a reasonable time and place at which each such contract or a copy may be inspected; this provision shall not apply to a contract relating to matters dealt with or to be dealt with in the ordinary course of the

company's business, or to a contract made more than two years before the date of the proposed issue or sale;

(*l*) The names and addresses of the auditors, if any, of the company's accounts;

(*m*) Full particulars of the nature and extent of the interest, if any, of each director in the promotion of the company or in the properties which the company proposes to acquire, or, if the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or to be paid to such director or the firm in cash, shares or otherwise, by any person, either to induce him to become, or to qualify him as, a director, or for other services rendered by him or by the firm, in the promotion or formation of the company;

(*n*) If the company has shares of more than one class, the voting rights respectively conferred by each class of shares, at the meetings of the company. R.S. (1909), 6119h, ss 1, 2, 3, 4; 14 Geo. V, c. 64, s. 1.

Party deemed vendor.

5. For the purposes of this division, every person who has been a party to a contract for the sale or purchase, or option for the purchase of a property, bought or to be bought by the company, shall be deemed to be the vendor in the following instances:—

(1) If the purchase price has not been fully paid at the date of the proposed issue or sale;

(2) If the purchase price is to be wholly or partly paid out of the proceeds of the proposed issue or sale;

(3) If the contract depends for its validity or fulfilment on the result of such proposed issue or sale. R.S. (1909), 6119h, s. 5; 14 Geo. V, c. 64, s. 1.

Application where lease instead of sale.

6. When a property is to be leased by the company, this division shall apply as if the word "vendor" also meant lessor, and the expression "purchase price" included also rent, and the expression "sub-purchaser" included sub-lessee. R.S. (1909), 6119h, s. 6; 14 Geo. V, c. 64, s. 1.

Nullity of stipulation inducing waiver, etc.

7. Every stipulation shall be null which induces or compels a subscriber for shares or bonds to waive compliance with any requirement of this division, or purports to affect him with notice of any contract, document or matter not specifically mentioned in the statement. R.S. (1909), 6119h, s. 7; Geo. V, c. 64, s. 1.

Application of division.

8. This division shall not apply to sales of shares made by a company to persons who have signed the application or documents necessary for the incorporation of the company, nor shall it apply to companies whose letters patent of incorporation or supplementary letters patent,—

(1) limit the number of shareholders to twenty, exclusive of the present and past employees who are shareholders of the company and who have continued so to be after leaving its employ; or

(2) forbid any appeal to the public to subscribe for shares. R.S. (1909), 6119h, s. 8; 14 Geo. V, c. 64, s. 1.

Effects as to other liabilities.

9. Nothing in this division shall limit or diminish any liability arising from any other provision of law. R.S. (1909), 6119h, s. 9; 14 Geo. V, c. 64, s. 1.

Prohibition as to mention in share-certificate, etc.

10. It is forbidden for any company, association or person, issuing or offering for sale the shares or bonds of any company, to mention, in the share-certificate or on the bond or in any written or printed document intended for publication, that the formalities required under the preceding sections for the issue and sale of such shares or bonds have been complied with other than by the declaration that the formalities required under the Securities Sale Act have been complied with. R.S. (1909), 6119i, 14 Geo. V, c. 64, s. 1.

Exception.

Loss of civil recourse for non-compliance with formalities.

11. Any company which does or allows to be done one or more of the transactions contemplated by sections 3 and 4 without the formalities required by such two sections having been accomplished, shall lose its civil recourse against the purchasers of such shares or bonds for the purchase price or balance of purchase price thereof; and the directors of such company, who may have participated by their vote in the commission of such infringement, shall be jointly and severally liable for the repayment of the shares or bonds sold contrary to the provisions of division II or III of this act, to the extent of the price paid by the purchasers for such shares or bonds.

Liability of directors.

Rights of Shareholders, etc.

Nothing in Division II or III shall be interpreted as depriving the shareholders or bondholders of the rights and recourses they may have against the company or any other person. R.S. (1909), 6119j; 14 Geo. V, c. 64, s. 1.

Division IV

PENALTIES FOR THE ISSUE AND SALE, IN CERTAIN CASES, OF SHARES, BONDS AND OTHER SECURITIES

Penalties for certain infringements.

12. Every company or corporation, incorporated after the 23rd of May, 1924 (the date of the coming into force of the act 14 George V, chapter 64), whatever be the manner or place of its incorporation and whatever be the authority incorporating it, whether within or without the Province, which carries on for itself or for any other such company or corporation, and every person who carries on for such a company or corporation, one or more of the operations contemplated by sections 3 and 4 and which are not included in subsection 3 of section 2, without the information mentioned in sections 3 and 4 having been transmitted in the manner therein indicated to the Provincial Secretary, shall be liable, for each infringement, to a fine of not more than one thousand dollars; and, failing payment of the said fine, such person, or, in the case of a company or corporation, the officers or directors thereof who may have participated, by their vote, in the commission of such infringement by the said company or corporation shall be liable to imprisonment for not more than three months. R.S. (1909), 6119k, 14 Geo. V, c. 65, s. 1.

REVISED STATUTES OF QUEBEC, 1925, CHAPTER 25, QUEBEC LICENSE ACT

Division IX

BROKERS

Non-resident brokers.

92. (1) Every broker, firm of brokers, or person, whose residence or chief place of business is outside the Province, desiring to do business therein through an agent or representative by dealing or taking orders to deal in shares, bonds, debentures or debenture stock from within the Province, with any broker or firm of brokers or person outside the Province, shall take out, for such agent or such representative in a fixed office or place of business, an annual license, upon payment of a duty of two thousand dollars.

Proviso.

(2) The taking out of a license under this section shall not exempt the holder of such license from any of the provisions of the Security Transfer Tax Act (Chap. 27). R.S. (1909), 992, 11 Geo. V, c. 26, s. 1.

Penalty for operating without a license.

93. Every person coming within the purview of subsection 1 of section 92, who carries on the business therein described, without being the holder of a license for that purpose, then in force, as well as his agent and representative in the Province, shall incur a penalty of two thousand dollars for each offence; and every one who deals with such person in the business described in the said subsection 1 of section 92, shall be liable to the Crown for twice the amount exigible upon each such transaction under the Security Transfer Tax Act (Chap. 27). R.S. (1909), 993; 11 Geo. V, c. 26, s. 1.

Semi-annual license.

94. (1) Every person not residing within the Province, who temporarily comes therein for the purpose of dealing in shares, bonds, debentures, or debenture stock, either in his own name or in the name of any firm or company, having its head office outside of the Province, or of any broker or other person not residing in the Province, shall first obtain a semi-annual license, upon payment of a duty of five hundred dollars.

Registration of resident brokers.

(2) Every person residing in the Province and doing a brokerage business of any kind therein, shall, at such times and in such manner as may be determined by the Provincial Treasurer, register with the stock tax collector, if in the district of Montreal, and with the proper collector of provincial revenue in any other revenue district. The registration fee shall be three dollars, of which two dollars shall belong to the consolidated revenue fund and one dollar to the collector.

Proviso.

(3) The taking out of a license under this section shall not exempt the holder of such license from any of the provisions of the Security Transfer Tax Act (Chap. 27). R.S. (1909), 994; 11 Geo. V, c. 26, s. 1.

Penalty for operating without a license.

95. Every person coming within the purview of subsection 1 of section 94, who carries on the business therein described without being the holder of a license for that purpose, then in force, shall incur a fine of not more than one thousand dollars and not less than five hundred dollars, for each offence; and every one who deals with such person in the business described in the said subsection 1 of section 94 shall be liable to the Crown for twice the amount exigible upon each such transaction under the Security Transfer Tax Act (Chap. 27). R.S. (1909), 995; 11 Geo. V, c. 26, s. 1.

QUEBEC

(18 George V, Chapter 14).

CHAPTER 14

An Act to amend the Quebec License Act

(Assented to, the 22nd of March, 1928).

His Majesty, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:—

R.S., c. 25, s. 94 am.

1. Section 94 of the Quebec License Act (Revised Statutes, 1925, chapter 25) is amended:—

(*a*) By replacing subsection 2 thereof, by the following subsections:—

Duty on persons doing brokerage business.

" 2. Every person residing in the Province, with a place of business therein and doing a brokerage business therein in shares, bonds, debentures or debenture-stock, must first obtain an annual license for the purpose, upon payment of a duty of three hundred dollars. If such person has more than one place of business in the Province, such duty shall be increased by the sum of one hundred and fifty dollars for each place of business over and above the first one.

Idem.

"3. Every person residing in the Province, without any place of business therein and doing a brokerage business therein in shares, bonds, debentures or debenture-stock, must first obtain an annual license for the purpose, upon payment of a duty of ten dollars.";

(*b*) By replacing therein the figure: "3," preceding the third subsection thereof, by the figure: "4."

R.S. c. 25, s. 95, replaced. Offence and penalty.

2. Section 95 of the said act is replaced by the following:—

" 95. 1. Every person coming within the purview of subsection 1 of section 94, who carries on the business therein described without being the holder of a license for that purpose, then in force, commits an offence against this Division and shall be liable, in addition to the payment of the license duty and costs, to a fine equal to twice the amount of the duties exigible under the said subsection, and, failing payment, to imprisonment for one month in the common gaol.

Offence and penalty.

" 2. Every person coming within the purview of subsection 2 of section 94, who carries on the business therein described without being the holder of a license for that purpose, then in force, commits an offence against this Division and shall be liable, in addition to the payment of the license duty and costs, to a fine equal to twice the amount of the duties exigible under the said subsection, and, failing payment, to imprisonment for one month in the common gaol.

Idem.

" 3. Every person coming within the purview of subsection 3 of section 94, who acts as broker without being the holder of a license for that purpose, then in force, commits an offence against this Division and shall be liable, in addition to the payment of the license duty and costs, to a fine equal to twice the amount of the duties exigible under the said subsection, and, failing payment, to imprisonment for one month in the common gaol."

3. The said act is amended by inserting therein, after section 95 thereof, the following sections:— R.S. c. 25, ss. 95a to 95e, added.

"95*a*. For the purposes of this Division, the word "broker" means any person dealing commercially in shares, bonds, debentures, debenture-stock or other securities, and includes any person who offers to sell or buy or who sells or buys such securities on behalf of another person; but it does not include the notary who is not regularly appointed agent for a person, firm or corporation doing a brokerage business, and who acts as intermediary between his clients and such broker. "Broker."

"95*b*. A broker shall not offer for sale or sell shares, bonds, debentures, debenture-stock or other securities of a company which is subject to the provisions of the Securities Sale Act (Chap. 228) and which has not complied therewith. Sale of certain shares, etc. prohibited.

"95*c*. A broker's license shall be valid throughout the Province and shall be issued by the Comptroller of Provincial Revenue. He may refuse to issue such license to any person who is not sufficiently recommended, and the Provincial Treasurer may suspend or revoke it, if, after investigation, he concludes that such broker has infringed any of the provisions of this act or of the Securities Sale Act (Chap. 228) or of the Security Transfer Tax Act (Chap. 27) or of the regulations made thereunder, or is accused of a criminal offence. Broker's license.

"A license issued to a firm or corporation under subsection 2 of section 94 does not include that required of its officers and directors under the authority of subsection 3 of the same section. Broker's license.

"95*d*. Every licensed broker who collects the tax imposed by the Security Transfer Tax Act (Chap. 27) acts, in such case, as agent for the Revenue Branch, and shall remit such tax in money to the Revenue Branch, at the times and with the reports and information which the Provincial Treasurer may exact. Tax to be remitted.

"95*e*. The Attorney-General of the Province of Quebec or the Provincial Treasurer may, at any time, authorize, in writing, one or more officers of his department, to examine the books and documents relating to the business of any broker dealing in shares, debentures, debenture-stock, bonds or other securities, in order to ascertain whether the transactions of such broker are in conformity with this act or with the Security Transfer Tax Act (Chap. 27) or with the Securities Sale Act (Chap. 228). Inspections.

"Every broker, who neglects or refuses to show his books and documents relating to his business to such officer or officers, commits an offence against this act, and shall incur for each offence a fine not exceeding one thousand dollars and, failing payment of the fine, the person, or, in the case of a company or corporation, the officers or directors of the company or corporation who, by their vote, may have contributed to the commission of the offence by the company or corporation, shall be liable to imprisonment not exceeding three months." Refusal. Offence and penalty.

4. This act shall come into force on the day of its sanction. Coming into force.

NOVA SCOTIA

EXTRACT FROM CHAPTER 174, REVISED STATUTES OF NOVA SCOTIA, 1923

Prospectus

Prospectus, date, contents and filing of.

79. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be filed for registration with the registrar on or before the date of its publication, and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated, and the copy thereof signed, in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a penalty not exceeding twenty-five dollars for every day from the date of the issue of the prospectus a copy thereof is so filed. 1921, c. 19, s. 79.

Specific requirements as to particulars in prospectus.

80. (1) Every prospectus issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

(*a*) the number of shares, if any, fixed, by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors; and

(*b*) the names, descriptions, and addresses of the directors; and

(*c*) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued; and

(*d*) the names and addresses of the vendors of any property purchased or acquired within the two preceding years by the company; provided that this requirement shall not apply to property purchased or acquired by the company in the ordinary course of the business carried on or intended to be carried on by the company; and

(*e*) the names and addresses of the vendors of any property proposed to be purchased or acquired by the company, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus; provided that this requirement shall not apply to property proposed

to be purchased or acquired by the company in the ordinary course of the business carried on or intended to be carried on by the company and proposed to be purchased or acquired from any person who is not a director of the company or engaged or interested in the formation of the company; and

(*f*) the amount (if any) paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount (if any) payable for goodwill; and

(*g*) the dates of and parties to every material contract relating to the purchase or proposed purchase of property by the company as aforesaid, and a reasonable time and place at which any material contract or a copy thereof may be inspected; and

(*h*) the amount or estimated amount of preliminary expenses; and

(*i*) the names and addresses of the auditors (if any) of the company; and

(*j*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively.

Where property acquired and taken on lease.

(2) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease.

Conditions to waive compliance void.

(3) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, documents or matter not specifically referred to in the prospectus, shall be void.

Prospectus deemed fraudulent in case of non-compliance.

(4) In the event of non-compliance with any of the requirements of this section, every prospectus shall, with respect to any person who takes shares in the company on the faith of such prospectus, be deemed fraudulent on the part of the company, and the promoters, directors, and officers of the company who knowingly issue or authorize the issue of such prospectus, provided that a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(*a*) as regards any matter not disclosed, he was not cognizant thereof; or

(*b*) the non-compliance arose from an honest mistake of fact on his part.

Section not applicable to existing members.

(5) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons, but subject as aforesaid this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

Requirements as to directors not applicable after one year.

(6) The requirements of this section as to the qualification, and remuneration of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company has commenced business.

Liability under general law not limited.

(7) Nothing in this section shall limit or diminish any liability which any person incurs under the general law or this Chapter apart from this section. **1921, c. 19, s. 80.**

Liability of directors for untrue statements in prospectus.

81. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company every person who is a director of a company at the time of the issue of the prospectus, and every person who has authorized the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(*a*) with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and

(*b*) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation; provided that the director, person named as director, promoter, or person who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(*c*) with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public document, that it was a correct and fair representation of the statement or copy of or extract from the document:

or unless it is proved—

(i) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(ii) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(iii) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of his withdrawal, and of the reason therefor.

Liability to indemnify person named as director who has not consented.

(2) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the

company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings against him in respect thereof.

Director may recover contribution in certain cases.

(3) Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not guilty of fraudulent misrepresentation.

(4) For the purpose of this section—

Promoter and expert defined.

the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him. 1921, c. 19, s. 81.

CHAPTER 11

An Act Respecting the Sale of Shares, Stocks, Bonds and other Securities

(Passed the 9th day of May, A.D. 1924)

Be it enacted by the Governor, Council, and Assembly, as follows:—

Title.

1. This Act may be cited as "The Sale of Securities' Act."

Company.

2. (*a*) The expression "Company" means a company, corporation, syndicate or association of persons incorporated or unincorporated other than a body corporate incorporated by or under the authority of an Act of the Parliament of Canada;

Security.

(*b*) the expression "Security" or "Securities" shall include any share, share warrant, stock, bond, or debenture, debenture stock, investment contract, certificate or other evidence of an interest in the property or undertaking of any company.

Act not applicable to certain shares and securities.

3. This Act shall not apply to any shares, stocks, bonds or other securities—

(*a*) of the Dominion of Canada or of any Province thereof; or

(*b*) guaranteed by the Dominion of Canada or any Province thereof; or

(*c*) of the United Kingdom of Great Britain and Ireland or of any foreign country; or

(*d*) of any county, city, town, municipality, or school district of any Province of Canada; or

(*e*) issued by a company whose bonds or shares are listed upon any incorporated stock exchange in Canada; or upon stock exchanges of London, Paris or New York.

(*f*) which are authorized for the investment of trust funds in any Province of Canada;

(*g*) of any company incorporated prior to the coming into force of this Act;

(*h*) issued by any company in favour of its shareholders or bondholders as dividends or as division of profits or upon a re-organization;

(*i*) sold judically, or by an executor, administrator, sequestrator or receiver, appointed by a court of competent jurisdiction, and official receiver, a guardian, trustee, liquidator, custodian of the estate of a bankrupt or authorized assignors, or sheriffs and other officials of any Court of the Province of Nova Scotia while acting in their representative capacities;

(*j*) of any society organized under an Act of the Legislature of Nova Scotia, entitled "An Act for the Regulation of Benefit Building Societies" and being Chapter 42, 12 Victoria;

(*k*) the issue whereof has been authorized or approved by the Nova Scotia Board of Commissioners of Public Utilities, or the Board or body analogous thereto, which exercises similar functions in any Province of Canada;

(*l*) secured by rates or taxes levied under the authority of any Province of Canada on property situate in such Province and collectable by the Municipality or Municipalities in which such property is situate, or to an isolated sale thereof, such sale not being made in the course of repeated and successive transactions.

Documents to be filed with Provincial Secretary before selling securities.

4. No person shall in Nova Scotia sell or offer or attempt to sell any security of any company unless and until there has been filed with the Provincial Secretary with respect to any such company the following documents,

(*a*) a copy of the charter, letters patent, memorandum of association, or other Act or document incorporating such company, together with all additions, supplements, or amendments thereto, certified to be true copies by the officer having the custody of the originals thereof;

(*b*) a copy of the by-law, article of association, or resolution, if any, authorizing the issuance of any security, the date on which the same was passed and confirmed, with the total amount par value, number, and complete description of issue of such securities;

(*c*) a copy of every estimate and prospectus and of every other representation in writing containing a statement of the profits likely to be realized by the company;

(*d*) a statement showing:—

(i) the names, addresses and occupations of the directors, their salaries, and the number of shares, if any, required as qualification for a director;

(ii) the authorized capital, the issued capital, the paid-up capital, indicating the shares thereof issued for promoting the company, services rendered, commissions, or purchase of assets, and the total amount of all securities which are a charge on the assets and undertaking of the company;

(iii) the number and classes of securities into which the capital of the company is divided, the voting powers, preferences, rights to dividends, profits, or capital of each class;

(iv) the amount of the issue of any such securities, and the minimum subscription on which the company may proceed to allotment;

(v) the number and amount of securities which within the two preceding years have been issued or agreed to be issued as fully or partly paid-up, otherwise than in cash, and the consideration therefor; in the latter case in addition thereto the extent to which such securities are so paid up;

(vi) the names and addresses of the vendors of any property acquired by the company or which it intends to acquire, which is to be paid for, wholly or in part, out of the proposed issue, or the purchase or acquisition of which has not been completed at the date of the statement, but which is proposed to be paid for out of such proceeds, the sum payable to the vendor in cash or securities or otherwise, and, where there is more than one vendor, or if the company is a sub-purchaser, the sum payable to each vendor; provided that if the vendors are a firm they shall not be treated as separate vendors;

(vii) the amount, if any, paid or payable as the purchase price in cash or securities for the purchase of any property, as above mentioned, specifying the amount, if any, allowed for good-will;

(viii) the amount or estimated amount of preliminary expenses;

(ix) the dates of every material contract, with the names of the contracting parties and a reasonable time and place at which the same may be inspected; provided that this section shall not apply to a contract entered into in the ordinary course of business, or entered into more than three years before the date of the statement;

(x) the names, occupations, and addresses of the persons who applied for incorporation, the number of shares subscribed for by each, and the nature and extent of the interest of each in the property of and profits of the company;

(xi) the names and addresses of the auditors, if any, of the company;

(xii) the nature and extent of the interest if any, of each director in the promotion of the company or in the properties which the company proposes to acquire, or, if the interest of such director consists in being a member of a firm, the nature and extent of the interests of

the firm, with a statement of all moneys paid or to be paid to such director or the firm in cash or securities by any person either to induce him to become or qualify him to become a director, or for other services rendered by him or the firm in the promotion or formation of the company;

(*e*) a statement of the assets and liabilities of the company showing the aggregate amount of each of the following:—

(i) claims due the company, the aggregate amount of doubtful claims being segregated;

(ii) the cash and merchandise on hand and the value of such merchandise;

(iii) claims of the company against each director;

(iv) disbursements made for future operations;

(v) debts of the company secured by mortgage;

(vi) amount of unsecured debts of the company;

(vii) indirect and conditional obligations of the company;

(viii) amount to be deducted for depreciation of stock in trade and any property of the company;

(ix) goodwill, grants, patents, copyrights, trademarks, leases, contracts and permits;

(x) it shall be sufficient compliance with this subsection if the statements required to be filed hereunder relate or refer to the last preceding annual accounting period of the company, or if the company has not been in business for one year, to a date within three months of the filing of such statement;

(*f*) for the purpose of this section the word "vendor" shall include a person who has entered into a contract, absolute or conditional, for the sale or purchase or for an option of purchase of any property to be acquired by the company where—

(i) the purchase money is not fully paid at the date of the statement; or

(ii) the purchase money is to be paid wholly or in part out of the proceeds of the issue offered sale; or

(iii) the contract depends for its validity or fulfilment on the result of such issue;

(*g*) where any of the property to be acquired by the company is to be taken on lease this section shall apply as if the expression "vendor" included the lessor and the expression "purchase money" included the consideration for the lease and the expression "sub-purchaser" included a sub-leasee;

(*h*) the statement required to be filed by this section shall be signed by the President and Manager or the Vice-President and Manager of such company and verified by affidavit of a responsible officer or person having knowledge of the facts and having a substantial interest in the company or its undertaking;

(*i*) all amendments or additions to any of the documents specified in subsections (*a*), (*b*) and (*c*) of this section from time to time made shall be similarly certified and filed with the Provincial Secretary.

Agreement or stipulation for security waiving compliance with Act etc. null and void.

5. Every agreement or stipulation whereby a subscriber for any security agrees or is induced or compelled to waive compliance with any requirement of this Act or which affects or purports to affect him with notice of any contract, document or matter not specifically mentioned in any statement required to be filed as in this Act provided, shall be null and void.

Documents not to mention formalities of Act have been complied with.

6. No company or person issuing or offering for sale any securities of any company shall mention in any written or printed document that the formalities required by this Act have been complied with.

Penalty for contravention.

7. Every person who contravenes any provision of this Act shall be guilty of an offence and shall be liable on summary conviction to a penalty of not less than fifty or more than one thousand dollars, and, in default of payment, imprisonment for a term not exceeding six months.

Contract for sale not enforceable unless documents filed.

8. A contract for the sale of any securities shall not be enforceable by action in any Court in Nova Scotia unless the documents and statements required to be filed under this Act have been in fact so filed.

Fees for documents and statements.

9. There shall be paid for the documents and statements required to be filed by this Act such fees as the Governor in Council may from time to time direct.

Act not applicable to certain companies.

10. This Act shall not apply to any company now or hereafter incorporated under Chapter 49, Revised Statutes, 1923, "Of the Incorporation of Farmers' Co-operative Societies," or under Chapter 70, Revised Statutes, 1923, "Of the Incorporation of Farmers' Fruit, Produce and Warehouse Associations," or under Chapter 71, Revised Statutes, 1923, "Of the Nova Scotia Farmers' Association," or under Chapter 189, Revised Statutes, 1923, "Of Fishermen's Bait Associations," or under Chapter 190, Revised Statutes, 1923, "Of the Organization of Fishermen's Unions," or under Chapter 191, Revised Statutes, 1923, "Of the Incorporation of Associations for the Construction of Mechanical Bait Freezers," or under Chapter 192, Revised Statutes, 1923, "Of the Incorporation of Owners of Vessels in the Fishing Industry," or under Chapter 193, Revised Statutes, 1923, "The Fishermen's Co-operative Societies' Act," or under Chapter 194, Revised Statutes, 1923, "The Cemetery Companies' Act," or under Chapter 195, Revised Statutes, 1923, "Of Library Associations and Institutes," or under Chapter 196, Revised Statutes, 1923, "The Rural Telephone Act," or under Chapter 4, Acts of 1919, "The Nova Scotia Housing Act," or by or under the authority of an Act of the Parliament of Canada.

Act in force by proclamation.

11. This Act shall come into force upon such date as the Governor in Council may be pleased to fix by proclamation.

CHAPTER 12

An Act Respecting the Registration of Brokers

(Passed the 9th day of May, A.D. 1924)

Be it enacted by the Governor, Council, and Assembly, as follows:

Title.

1. This Act may be cited as "The Brokers' Registration Act."

"Security" defined.

2. The expression "security" or "securities" shall include, any share, share warrant, stock, bond, or debenture, debenture stock, investment contract, certificate or other evidence of an interest in the property or undertaking of any Company.

Certificate of Registration.

3. No person shall, either as principal, agent or otherwise, offer for sale, sell or otherwise deal in securities or underwrite any issue of securities or purchase or otherwise acquire such securities from another person for the purpose of re-selling or offering for sale such securities for commission or at a profit without first securing a certificate of registration from the Provincial Secretary.

Application for registration.

4. (1) Every applicant for registration shall file in the office of the Provincial Secretary an application in writing, duly verified by affidavit. Such application shall be in such form and contain such particulars as may be required by the regulations passed hereunder.

Application of Agent to be approved.

(2) Where any person applying for registration is acting as an agent for any other person, firm, or corporation, such application shall be approved and countersigned by the person, firm, or corporation for which such person applying for registration is so acting.

Security to be furnished.

(3) Every such applicant shall, if requested by the Provincial Secretary, furnish security in the form and for an amount satisfactory to the Provincial Secretary that he will faithfully comply with the provisions of this Act and of the regulations made hereunder.

Book of names and addresses to be kept.

5. The names and addresses of all persons registered under the provisions of this Act shall be entered in a book which shall be kept in the office of the Provincial Secretary and shall be open to public inspection.

List of securities offered for sale to be filed monthly.

6. (1) Every person who holds a certificate of registration under this Act shall on or before the last day of each month file in the office of the Provincial Secretary a statement, verified by affidavit, containing a list of all securities offered for sale by him during that calendar month, and a copy of every prospectus or circular letter relating to each such security used by such person for advertising such security or for the purpose of inducing any person to purchase or subscribe for any such security.

(2) It shall be sufficient compliance with the provisions of this section if the information required to be filed by this section is filed on behalf of any person by the person, firm or company which any such person represents, provided that such person, firm or company has registered under this Act.

Regulations as to fees, reports, etc.

7. The Lieutenant-Governor-in-Council may from time to time make regulations fixing the fees for registration and prescribing the form of applications, reports and other documents required by this Act or by any regulations hereunder, and generally for the better carrying out of the provisions of this Act.

Penalty for contravention.

8. Every person who contravenes any provision of this Act shall be guilty of an offence and shall be liable on summary conviction to a penalty of not less than one hundred dollars and not more than five hundred dollars, or, in default of payment, to a term in prison not exceeding six months.

Certificate may be cancelled for cause.

9. The Provincial Secretary may at any time, for misconduct or violation of the provisions of this Act or of the regulations passed hereunder, or for violation of any of the provisions of The Sale of Securities Act, cancel any certificate of registration issued under this Act and remove the name or names of the holder thereof from the register.

Act not applicable.

10. This Act shall not apply to the sale by a company of its securities.

Act in force by Proclamation.

11. This Act shall come into force upon such date as the Governor-in-Council may be pleased to fix by proclamation.

MANITOBA

CHAPTER 46

An Act for the Protection of Investors

(Assented to March 16th, 1928)

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:—

Title.

1. This Act may be cited as "The Security Frauds Prevention Act".

Definitions.

2. In this Act, unless the context otherwise requires,

"Attorney-General."

(*a*) "Attorney-General" means the Attorney-General of Manitoba.

"Board."

(*b*) "Board" means The Municipal and Public Utility Board.

(*c*) "Board's Act" means "The Municipal and Public Utility Board Act", being chapter 33 of the Statutes of 1926.

"Company."

(*d*) "Company" includes any association, corporation, company or other incorporated organization, whether acting as a trustee or not.

"Fraud."

(*e*) "Fraud", "fraudulent" and "fraudulent act" include in addition to their ordinary meaning and to any meaning which the Courts have heretofore or may hereafter attach thereto:

(i) any intentional misrepresentation, by work, conduct, or in any manner of any material fact either present or past, and any intentional omission to disclose any such fact;

(ii) any promise or misrepresentation as to the future which is beyond reasonable expectation and not made in good faith;

(iii) any fictitious trade or pretended trade in any security;

(iv) the gaining or attempt to gain, directly or indirectly through a trade in any security, a commission, fee or profit so large and exorbitant as to be unconscionable and unreasonable;

(v) generally any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser of any security as to the nature of any transaction or as to the value of such security;

(vi) the making of any false statement in any application, information, material or evidence submitted or given to the Board or a representative of the Board under the provisions of this Act or the regulations or in or upon an application for a license to sell securities or for a certificate permitting the sale of the securities of a company under the provisions of the Board's Act;

(vii) the violation of any provision of this Act or of the regulations relating to the manner in which any person or company shall trade in securities, and anything specifically designated in the regulations as coming within the meaning of this definition;

(viii) any artifice, agreement, device or scheme to obtain money, profit or property by any of the means hereinbefore set forth or otherwise contrary to law.

(*f*) "Person" means an individual, partnership, association, syndicate and any other unincorporated organization whether acting as a trustee or not. "Person."

(*g*) "Regulations" means regulations made from time to time by the Lieutenant-Governor in Council under the provisions of this Act. "Regulations."

(*h*) "Security" includes any bond, share, debenture or other document or instrument commonly known as security, every documentary evidence of indebtedness or evidence representing or secured by some title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company or evidence of any option upon a security, and anything designated as a security by the regulations. "Security."

(*i*) "Trade" or "trading" includes any disposition of, transaction in, or attempt to deal in, sell or dispose of a security or interest in or option upon a security for any valuable consideration whether the terms of payment be upon margin, instalment or otherwise, and any underwriting of any issue or part of an issue of a security, and any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing or specifically designated as "trade" and "trading" by the regulations. "Trade."

(*j*) "Trustee" means any persons or a company, as the case may be, executing a trust expressly created by or declared in an instrument in writing (other than a will, court order or judgment) where such trust is to carry on any business or secure the payment or repayment of money. "Trustee."

3. The Board, or any person to whom as its representative, the Board may in writing delegate such authority, may examine any person or thing whatsoever at any time, in order to ascertain whether any fraudulent act or any offence against this Act or the regulations has been, is being or is about to be committed, and for such purpose shall have the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and produce documents, records and things as is vested in the Court of King's Bench or a Judge thereof for the trial of civil cases. Power of Board to examine.

4. The failure without reasonable excuse of any person summoned for examination under section 3 to appear, or his refusal to give evidence, or to answer any question, or the failure without reasonable excuse or refusal of any person or company to produce anything, where the evidence, answer or production is such as would be required in an action, shall constitute an offence against this Act and shall also be *prima facie* evidence upon which Effect of failure to appear for examination.

(*a*) the Board may base an affirmative finding concerning any fraudulent act to which the Board may deem it relevant, or

(*b*) the Court of King's Bench or a Judge thereof may grant an interim or permanent injunction, or

(*c*) a police magistrate may base a conviction for an offence against this Act or the regulations.

Disclosure of evidence an offence.

5. The disclosure by any person other than by the Attorney-General or a member or the secretary of the Board or such representative of any information or evidence obtained or the name of any witness examined or sought to be examined under section 3 shall constitute an offence against this Act.

Powers of Board when fraud committed.

6. If it is found upon investigation that any fraudulent act or that an offence against this Act or the regulations has been, is being, or is about to be committed,

(*a*) the Board may suspend the license to sell securities or the certificate granted or issued under or, any exemption contained in the provisions of Part IV of the Board's Act to the person or company implicated;

(*b*) the Board, if it considers such suspension inadequate, or where any person or company not so licensed or certificated is in the opinion of the Board concerned or implicated in such fraudulent act or in such offence, shall report thereof to the Attorney-General, who may proceed under the provisions of the next following section or otherwise as may be provided in this Act or the regulations.

Attorney-General may apply to Court of K.B. for orders.

7. (1) The Court of King's Bench or any Judge theerof is hereby empowered upon application of the Attorney-General or of counsel in his behalf where it is made to appear upon the material filed or evidence adduced that any fraudulent act or any offence against this Act or the regulations has been, is being or is about to be committed, may by order enjoin any person or company from trading in any security whatever, or in any specific security, or from committing any specific fraudulent act or series of fraudulent acts, absolutely or for such period of time as shall seem just.

Applications.

(2) An application by or on behalf of the Attorney-General under this section may be made without any action being instituted, either

Ex-parte.

(*a*) by ex parte motion to a Judge of the Court, in chambers, for an interim injunction which shall, if granted, remain in full force for ten days from the date thereof or until the originating motion mentioned in paragraph (*b*) of this subsection is sooner heard and determined, and such injunction shall have the same force and effect as if it had been originally granted by order of the Court, or

Originating notice.

(*b*) by an originating notice of motion made to a Judge of the Court, in Court, which, if an interim injunction has been granted, shall be served within five and returnable within ten days from the date of such interim injunction.

Rules of K.B. to apply to applications.

(3) All proceedings under this section whether ex parte or by originating notice shall be conducted in accordance with the provisions and rules of the King's Bench as far as the same are applicable to proceedings of a like nature, save that service of the originating notice may be made at the address of the person or company shown on the application for a license or certificate under Part IV of the Board's Act, or otherwise as the Court or Judge may order, and save further that costs may be awarded to but not against the Attorney-General. There shall be an appeal from any judgment or order pronounced hereunder in the same manner as from any other judgment or order of the Court.

(4) A Judge of the Court of King's Bench in exercising any of the powers conferred upon such Judge by this Act shall be deemed so to act as a Judge of such Court and not as persona designata. Judge not acting as persona designata.

(5) Any information, evidence, exhibit or thing obtained by the Board or its representative under the provisions of this Act or the Board's Act or the regulations or copies thereof certified to be true copies by the secretary of the Board shall as far as relevant be receivable in evidence for all purposes in any action, proceeding or prosecution, and in proceedings under this section only the evidence of a witness may be used against him notwithstanding anything in the Manitoba Evidence Act or any rule of law to the contrary. Evidence.

8. The Board may,—

(*a*) when it is about to examine or cause to be examined or during or after the examination of any person or company under section 3; or

(*b*) when the Attorney-General is about to apply for or has applied for or has obtained an injunction, interim or otherwise, against any person or company under the provisions of section 7; or

(*c*) where criminal proceedings which in the opinion of the Board are connected with or arise out of any security, or any trade therein, or out of any business conducted by the accused, are about to be or have been instituted against any person,

direct in writing any person or company having on deposit or under control or for safe-keeping any funds or securities of the person or company, so to be or actually examined, enjoined or charged to hold such funds or securities in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the provisions of "The Bankruptcy Act" or by the Court of King's Bench or a judge thereof or until the Board in writing revokes such direction, and the failure by any person or company to comply with such direction shall be an offence against this Act. Board may issue stop orders.

9. The forfeiture of any bonds under the provisions of subsection (3) of section 157 of the Board's Act may be evidenced by a certificate to that effect signed by a member or the secretary of the Board, which certificate, without proof of the signature or office of the person purporting to sign the same, shall constitute the sum named in such bond a debt due and owing by the person or company bound thereby to His Majesty in the right of the Province of Manitoba, and the Attorney-General when His Majesty accordingly becomes a creditor of any person or company may take such proceedings as he shall see fit under "The Bankruptcy Act" or any Act or provision relating to the winding up of companies for the appointment of an interim receiver, custodian, trustee, receiver or liquidator, as the case may be. Attorney-General may institute proceedings under Bankruptcy Act.

10. No action whatever, and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy shall lie or be instituted against any person whether in his public or private capacity in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations, where such person is the Attorney-General or a member of the Board or where such person was proceeding under the written or verbal directions or consent of the Attorney-General or any such member. Attorney-General or Board not subject to injunction, mandamus or prohibition.

Regulations.

11. The Lieutenant-Governor in Council may make and from time to time amend, alter or repeal regulations not inconsistent with this Act for the better carrying out of the provisions of this Act, for the more efficient administration thereof and for the prevention of fraud in trading in securities whether upon any stock exchange or elsewhere in Manitoba, for the creation of offences, and for any other purpose elsewhere indicated in this Act, and all such regulations and any amendment, alteration or repeal thereof shall become effective in all respects as if enacted in this Act upon the publication thereof in the *Manitoba Gazette*.

Penalties.

12. (1) Every person who violates any provision of this Act or the regulations designated as an offence or who does any fraudulent act not punishable under the provisions of the Criminal Code of Canada shall be liable upon summary conviction thereof by a police magistrate to a penalty of not more than one thousand dollars for a first offence, and not more than two thousand dollars for a second or subsequent offence, and in case of either a first or a second or subsequent offence, either in default of payment of any penalty imposed, or in addition to such penalty, to imprisonment for a term not exceeding six months.

(2) The provisions of subsection (1) shall be deemed to apply mutatis mutandis, to any company save that the money penalties may be increased in the discretion of the magistrate to a sum not exceeding twenty-five thousand dollars.

No prosecution except with consent of Attorney-General.

(3) No prosecution under this Act shall be instituted except with the consent or under the direction of the Attorney-General.

Part I of Board's Act incorporated.

13. The several provisions of Part I of the Board's Act are incorporated herewith and shall be applicable to the duties, powers and responsibilities of the Board hereunder except where inconsistent with the provisions of this Act.

Stock exchanges.

14. Every stock exchange and person or company in Manitoba furnishing facilities or conveniences for trading in securities shall be within the provisions of this Act and the regulations and may from time to time be suspended from carrying on operations within the Province for a period not exceeding ten days at any one time by order of the Board where, as a result of any investigation made under this Act such suspension is deemed necessary to prevent fraudulent acts. The power to make regulations shall include power to inspect, regulate and to provide the manner in which records are to be kept and trading carried on in stock exchanges or by any such person or company.

Regulations.

15. The Lieutenant-Governor in Council shall have power by order in council or by regulations approved by order in council to require every stock exchange, company or person carrying on business or trading in securities in the Province to be registered and may therein make exceptions, prescribe fees and penalties and define powers and procedure in respect of such registration.

Attorney-General may give notice of fraudulent acts.

16. The Attorney-General, upon being advised of any advertised or solicited sale of or trading in securities upon statement or terms not in accordance with the actual facts or conditions or of any fraudulent act in the offering of such securities may, after investigation of the facts by himself or the Board, and finding confirmation of such advice, give such notices, either personal or public, as may be deemed

by him necessary to prevent any injury to investors; and every notice given under this section by the Attorney-General shall be absolutely privileged.

17. This Act shall come into force on a day or days fixed by proclamation of the Lieutenant-Governor and the several sections thereof may be so proclaimed to come into force on different days.

MANITOBA

STATUTES OF MANITOBA 1926, CHAPTER 33, THE MUNICIPAL AND PUBLIC UTILITY BOARD ACT

Chapter 43

An Act to amend "The Municipal and Public Utility Board Act"

(Assented to March 16, 1928)

His Majesty, by and with the advice and consent of the Legislative Assembly of Manitoba, enacts as follows:

Section 105 amended by adding ss. (3).

1. Section 105 of "The Municipal and Public Utility Board Act," being chapter 33 of the statutes of 1926, is amended by re-numbering the same as subsection (1) of section 105; section 106 is re-numbered as subsection (2) of 105; and to section 105 there is added the following subsection:

Not applicable to Winnipeg.

(3) This section shall not apply to the city of Winnipeg.

New section 106.

2. The said Act is amended by adding thereto the following as section 106:—

Caveats.

106. The Board, after such notice and hearing as it deems proper and upon such terms and conditions as to costs or otherwise as it may fix, shall have power by order to vary, vacate, cancel or substitute, in whole or in part, any building restriction affecting any lands in the province of Manitoba howsoever created and may order the discharge or removal of any caveat recording such restriction. An order of the Board under this section shall have the same effect as if enacted by this Legislature in amendment of "The Real Property Act."

Section 156 substituted.

3. Section 156 of said Act together with the heading thereto is repealed and the following substituted therefor:

Limitation of license.

156. The Board in issuing a license under the preceding sections may limit the authority to sell securities under such license to the securities of a company or companies or of a class or classes specified in the license and may limit the term of such license and specify the locality in which securities may be sold thereunder. The fee for a license so limited may be reduced according to the nature of the limitation, but shall not in any event be less than five dollars.

Ss. (1) of sec. 157 amended.

4. Subsection (1) of section 157 of the said Act is amended by inserting immediately after the word "before" in the first line the words "or at any time after":

Section 158 substituted.

5. Section 158 of said Act is repealed and the following substituted therefor:

Licensee not to advertise license.

158. No licensee under this Part shall insert in any advertisement of himself or itself as a vendor or offerer of securities that he or it is so licensed or that the company whose securities are sold or offered for sale is the holder of a certificate or special certificate issued under this Part.

Par. (e), ss. (1) of sec. 160 amended.

6. Paragraph (*e*), subsection (1) of section 160 of the said Act is amended by substituting "to" for "of" in the first line.

Ss. (1) of sec. 160 amended.

7. Said subsection (1) of section 160 is amended by adding thereto the following paragraph:—

Prospector's evidence of indebtedness.

(i) the disposal in good faith by an actual prospector of any evidence of indebtedness given by him for the purpose of financing a prospecting expedition, or for the purpose of disposing of any of his interest in a mining claim or property staked by or wholly or partly owned by him.

Section 161 amended.

8. Section 161 of said Act is amended by adding thereto the following as subsection (2):—

Building Societies not exempted.

(2) Nothing in this Act shall be construed to exempt building societies and companies commonly known as savings and loan associations, whether heretofore or hereafter incorporated under "The Manitoba Building Societies Act" or by or under any other Act of this Legislature from the provisions of this Part.

Section 165 amended.

9. Section 165 of said Act is amended by inserting after the word "Province" in the second line the words "and not having its head office in the Province".

New sections added.

10. The said Act is amended by adding thereto the following heading and sections:—

MINING COMPANIES AND SYNDICATES

Certificates not required for sale of mining company shares.

167A. (1) Subject to the provisions of this Part as to the licensing of salesmen of securities no certificate or special certificate referred to in sections 162 to 166 or in section 167 shall be required to authorize the sale, offer for sale, or issue of the shares, stocks, bonds and other securities of any company or syndicate whose chief business or object as set out in its charter is that of mining and which is actively engaged in the exercise of powers relating to the acquiring, developing, working, operating or managing of mines, mineral claims or mining properties, or the winning, gaining, treating, refining or marketing of minerals therefrom, and the like, when:

(*a*) such mining company is incorporated or licensed by or under an Act of the Parliament of Canada or of the Legislature of this or any other Province and having its chief object or powers as above indicated; or

(*b*) such mining syndicate is registered as provided in the next following section.

(2) Whether a company is a mining company and entitled to the exemption hereby provided shall be a question of fact for the Board in matters before it, or for a magistrate, judge or court in any prosecution, trial or hearing before him or it.

Certain mining syndicates may be registered.

167B. Any mining syndicate or proposed mining syndicate consisting of not more than forty persons or the actual subscribed capital of which does not exceed twenty-five thousand dollars may be registered by the Board, in the discretion of the Board and subject to such conditions as it may prescribe, on application and by filing a copy of its articles of partnership, a copy of its trust deed, if any, particulars of the mines, mineral claims or mining properties held by it under lease, option, or otherwise, a statement showing the amount and terms of its capitalization or proposed capitalization, whether divided into shares of nominal value or otherwise, the number of such shares, units or memberships and the number issued or to be issued, the proportion of the proceeds of the allotment of such shares, units or memberships to be used for the development or operation of the undertaking, a prospectus or plan of the syndicate's scheme of operation and management, together with such other information as the Board may require, all verified to the satisfaction of the Board.

Certificate of registration.

167C. The Board may, in its discretion, issue to a mining syndicate, or to persons about to organize a mining syndicate, which has or who have filed the material heretofore required, a certificate of registration, which certificate shall operate as and be a validation of any term or clause in the articles of partnership of the syndicate, which purports to provide a limitation of the liability of the respective members or of the parties thereto, as from the date of such articles. Such certificate shall also render unnecessary any registration of the syndicate under "The Partnership Act."

Amendments to documents to be filed.

167D. A copy, duly verified, of any alteration, amendment or variation of any document filed with the Board by a mining syndicate pursuant to which a certificate of registration has been issued, shall be filed with the Board forthwith after the making of such alteration, amendment or variation and any such alteration, amendment or variation shall be without effect until a copy thereof is filed. The Board may, however, exercise its discretion as to the acceptance or otherwise of any such copy offered for filing.

Section 175 repealed.

11. Section 175 of said Act together with the heading thereto is repealed.

Ss. (5) of section 178 substituted.

12. Subsection (5) of section 178 of said Act is repealed and the following substituted therefor:

Fees.

(5) The fee for such special license shall in the first instance be twenty-five dollars, but the license may be renewed from year to year without further fee, except for the registration of the officials, members, salesmen and employees of the licensees, which fee shall be five dollars annually for each person so registered. Where the holder of the special license is an individual, he may be licensed and registered in the first instance upon payment of the fee for the special license.

Ss. (3) of section 182 substituted.

13. Subsection (3) of section 182 of said Act is repealed and the following substituted therefor:—

By-laws of municipality amending by-laws of Winnipeg Municipal Suburban Board to be approved by Board.

(3) Any by-law passed or order made by the Winnipeg Suburban Municipal Board purporting to act for any municipality administered by it, other than the by-laws and orders of the said Board set out in the schedules to chapter 108 of the statutes of 1927, may be amended, varied, substituted or repealed by by-law of the municipality concerned, but any by-law making such amendment, variation, substitution or repeal shall not be effective until the same is approved by the Municipal and Public Utility Board, which approval may be given before the second reading, but shall be obtained before the third reading or final passing, of the said by-law.

By-laws in c. 108, S.M. 1927, to be amended only by Legislature.

The by-laws and orders set out in the schedules to said chapter 108 shall not be amended or repealed save by Act of this Legislature, but in the event of any doubt or difficulty arising with respect to the interpretation of any of the clauses thereof, or as to the respective powers or duties of a municipal council and the supervisor thereunder, the Municipal and Public Utility Board may resolve such doubt or difficulty and may define powers and procedure.

14. This Act shall come into force on the day it is assented to.

MANITOBA

Revised Statutes of Manitoba, 1913, *The Companies Act, Chapter* 35.

PART III.—PREVENTION OF FRAUDULENT STATEMENTS BY COMPANIES.

False statement as to subscribed capital.

97. Where any advertisement, letter head, postal card, account or document, issued, published or circulated by any corporation, association or company, or any officer, agent or employee of any such corporation, association or company, purports to state the subscribed capital so actually and in good faith subscribed as aforesaid, or which

False statement as to incorporation, etc.

contains any untrue or false statement as to the incorporation, control, supervision, management or financial standing of such corporation, association or company, and which statement is intended or calculated or likely to mislead or deceive any person dealing, or having any business or transaction, with said corporation, association or company, or with any officer, agent or employee or the association, corporation of company, shall, upon summary conviction thereof before any justice of the peace having jurisdiction where the offence was committed, be

Penalty.

liable to a penalty not exceeding two hundred dollars and costs, and not less than fifty dollars and costs, and, in default of payment, the offender, being an officer, agent or employee as aforesaid, shall be imprisoned, with or without hard labour, for a term not exceeding six months and not less than one month, and, on a second or any subsequent conviction, he may be imprisoned, with hard labour for a term not exceeding twelve months and not less than three months. R.S.M. c.29,s.1.

Appointment of inspectors to examine affairs of company.

98. The Lieutenant-Governor in Council may appoint one or more competent inspectors for the purpose of examining into the affairs of any corporation, association, or company, and obtaining a report thereon, in the following cases, that is to say:—

On request of shareholders of company having shares.

(*a*) In the case of any company that has a capital divided into shares, upon application of members having not less than one-fifth part of all the shares for the time being issued;

(*b*) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the registers of the company as members; On request of members of company not having shares.

(*c*) In case it is made to appear that it is in the interests of justice that an inspection be had, then upon application of any one having, or claiming to have, any interest in the company. 2 Geo. V, c. 12, s. 1, part. On request of any person interested.

99. Every application for any of the purposes aforesaid shall be supported by such evidence as the Lieutenant-Governor in Council may require, and shall also show that the applicants have good reason for requiring such investigation to be made, and the applicant or applicants may also be required to give security for the payment of the costs of the inquiry. 2 Geo. V, c. 12, s. 1, part. Evidence in support of application. Security for costs.

100. It shall be the duty of the officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power. Any inspector may examine on oath the officers and agents or any director or shareholder of the company in relation to its business or proceedings and may administer such oath accordingly. If any officer, agent, director or shareholder refuses to produce any book or document directed to be produced, or to answer any question relating to the affairs or proceedings of the company, he shall, on summary conviction before a justice of the peace, be liable to a penalty of not less than twenty-five dollars and not exceeding fifty dollars in respect of each offence. 2 Geo. V, c. 12, s. 1, part. Company to produce books and documents. Inspectors may take evidence on oath. Penalty for refusal to produce books or answer questions.

101. Where an inspector deems it necessary to examine under oath any officer, agent, director or shareholder of the company, he shall cause to be served upon the officer, agent, director or shareholder, at least forty-eight hours before the time fixed for such examination, an appointment in writing stating the time and place of such examination, and if the officer, agent, director or shareholder so served with such appointment shall fail to attend without good cause at the said time and place, he shall be liable to the same penalty as set out in the preceding section. 2 Geo. V, c. 12, s. 1, part. Notice of examination under oath. Penalty for failure to attend.

102. Upon the conclusion of the examination, the inspector or inspectors shall report his or their opinion on the several matters inquired into to the Lieutenant-Governor in Council. The Lieutenant-Governor in Council shall direct by whom and in what manner the costs of the inquiry shall be paid. 2 Geo. V, c. 12, s. 1, part. Inspector to report. Costs.

103. The Lieutenant-Governor in Council may appoint Counsel to advise with and act for the inspectors in any case in which it is necessary or in the interests of justice so to do. 2 Geo. V, c. 12, s. 1, part. Counsel.

104. The inspectors, or anyone acting with them or by their direction, shall not divulge or make known in any way the fact that they are making an inspection or examination of the affairs of the company, except as may be necessary in conducting the same and in the report thereof to the Lieutenant-Governor in Council. 2 Geo. V, c. 12, s. 1, part. Fact that inspection is being made not to be divulged.

Prosecutor. Application of fine.

105. Anyone may be prosecutor or complainant under this part, and one-half of any fine imposed shall, when received, belong to His Majesty for the use of the Province, and the other half shall belong to the prosecutor or complainant. R.S.M., c. 29, s. 2.

MANITOBA

STATUTES OF MANITOBA, 1926, CHAPTER 33, THE MUNICIPAL AND PUBLIC UTILITY BOARD ACT

Part IV

THE REGULATION OF SALES OF SHARES AND OTHER SECURITIES

Salesmen of Securities

LICENSES

Salesmen must be licensed.

151. No contract shall be made or agreed or attempted to be made in Manitoba by any natural person (excepting only those persons to whom, as hereinafter provided, this section does not apply), either on his own behalf or as the agent or broker of another person, or as an agent, employee, member or officer of a company, whereby he sells or offers or agrees to sell, or directly or indirectly attempts to sell, any shares, stocks, bonds or other securities of any kind whatsoever, unless he first obtains, in the manner hereinafter provided, a license from the Municipal and Public Utility Board so to do.

Procedure to procure license.

152. Every such license shall be obtained from and issued by the Board upon application therefor upon such form as it shall provide for the purpose. The applicant shall furnish to the Board in writing upon the application form, or otherwise if the Board so directs, his undertaking to comply with all the provisions of this Part and also such information respecting the name, personal description, postal or business address of the applicant, the kinds or classes of securities proposed to be sold or offered for sale by him and the place or places in the Province where the same are to be offered for sale, together with such further material or information and verified in such manner as the Board may require.

Additional information.

153. The Board may at any time and from time to time during the currency of any license issued pursuant to any such application require information additional to the foregoing to be given it in writing, upon oath or otherwise, as well as the production for examination by the Board of any contract or agreement given by or in favour of the licensee respecting the terms or conditions under which any securities were sold or are offered for sale by the licensee.

Fee.

154. (1) The fee for every such license shall be fifteen dollars. No such license shall be issued until such fee is paid and the Board is satisfied that the provisions of this Part are being and are likely to be complied with by the applicant. The Board may refuse to issue a license to any applicant therefor, and a license may be refused to any person who does not prove himself to the Board. in its sole discretion a bona fide resident of this Province.

Refusal of license.

(2) Every such license shall bear upon its face its consecutive number, the date of issuance and such other particulars as the Board may direct and shall expire on the thirty-first day of December next following the date upon the face thereof. Expiry.

(3) No such license shall be transferable; and every such license in the possession of any person other than the licensee named therein shall, during such possession, be null and void. Non-transferable.

(4) Every license so issued shall be produced and exhibited on request to any prospective purchaser of securities offered for sale by the licensee, to any member or employee of the Board, or to any constable or other peace officer on duty. The failure or refusal of any person to so produce and exhibit a license shall be prima facie evidence that such person is not the holder of a license under this Part. Production on request.

155. (1) A license of like effect to the foregoing when applied for, issued and otherwise obtained in compliance with the foregoing provisions may be issued by the Board to the members, officers or employees, collectively, of a company, which license, when duly issued, shall be authority to such company to sell securities or offer securities for sale, wholly or partly as its business. License to salesmen of company.

(2) The Board in issuing a license under this section may limit the number of persons, whether as members, officers or employees of the company, who may be permitted to act as salesmen of securities in the business of such company. The names of all such persons shall be written on the license and the same or any of them may be removed by the Board, or the number thereof reduced or increased during the currency of the license, upon application and the compliance with the provisions hereof on the part of the company. The Board may refuse to permit any particular person to be employed in selling securities for, or to have his name written on any such license. Names on such license.

(3) A member, officer or employee of a company whose name appears on and has not been removed from any such license shall not, as an individual, require a license under the preceding sections other than as provided in this section. No additional license required.

(4) No member, officer or employee of a company whose name is not on such a license, issued for the then current year, shall sell or offer or agree to sell any securities whatsoever. Prohibition.

(5) The company, to the members, officers and employees of which any such license has been issued, shall be responsible for the actions and undertakings of its members, officers and employees, but this provision shall not render any such member, officer or employee exempt from any penalty provided for the violation of any provision of this part. Responsibility of company.

(6) The fee for a license under this section shall be the amount equal to the number of names upon the license multiplied by the fee under the last preceding section. Company fee.

PERMITS

156. (1) Any person who desires to sell or offer for sale any shares, stock or other securities held in his own name, or as executor or administrator of the estate of a deceased person, for the purpose of disposing of the same and otherwise than as a part of his business Permits for individual sales.

or occupation, shall before doing so obtain a permit to do so from the Board. Such permit shall be issued upon such application and upon such form as the Board may in any given case approve. The permit shall set forth the shares or securities to be sold under its authority and no other securities may be sold under any such permit than those therein described.

Fees.

(2) There shall be paid to the Board for every such permit such nominal fee based on the market value of the securities proposed to be sold under it as the Board may demand for its clerical services in issuing the permit. No such fee shall exceed one dollar. Notwithstanding the foregoing the Board may issue any such permit without the payment of any fee if in its discretion it sees fit to do so.

Fee not to be charged to purchaser.

(3) No fee paid for a permit under this section shall be charged to or collected from the purchaser of the securities named in the permit. The violation of this subsection shall be an offence against this Part and the permittee and the purchaser of any of such securities shall each be liable for such violation.

Sales within law

(4) The sale by a permittee of any of the securities named in any such permit shall not be deemed a violation of the preceding sections of this Part.

BONDS BY LICENSEES

Board may require bond.

157. (1) The Board before issuing any such license or permit may require the applicant to furnish to the Board the bond of a bonding or guarantee company, duly authorized to carry on its business in the province, or his personal bond with good and sufficient sureties, approved by the Board, in such penal sum and conditioned for the faithful performance of the person bonded of any undertaking given by him to the Board or to a purchaser of securities from him, or against the subsequent disclosure of falsity in any term of his application for a license or any information or report furnished him to the Board, or against the revocation, as hereinafter provided, of his license, or conditioned in such other manner, and for such period of time as the Board shall require or approve.

Bond of company for its salesmen.

(2) Any such bond may be furnished by a company applicant in respect of its members, officers or employees; but the company shall be made liable therein for the performance of the conditions thereof by all its members, officers and employees so bonded.

Enforcement of bond.

(3) If the Board is satisfied, by such evidence as it may require, that any bond furnished it under this section should, because of misconduct of any person so bonded, be forfeited, it may take proceedings to enforce the same for the benefit of any person or persons interested therein, or may assign the bond to any person who appears to the Board to have suffered pecuniary loss by reason of such misconduct or is otherwise interested in having the bond enforced.

Advertisements by licensees.

158. (1) Every person licensed under the foregoing sections and a company whose members, officers or employees are so licensed shall in any advertisement of himself or itself as a seller of securities insert in such advertisement information to the public that he or it is so licensed, giving the number of the license. The Board may direct that all such insertions be according to a form prescribed by it and thereafter such form shall be used in such advertisements.

Prohibition.

(2) No person or company whose officers, members or employees are not so licensed shall advertise or hold him or its self out as being so licensed, and no printer, publisher, newspaper proprietor or

other person shall print, publish or advertise in this province any such advertisement for a person or company not so licensed. The breach of this subsection shall be a violation of this Part.

Register of licenses and permits.

159. (1) The secretary of the Board shall keep or cause to be kept a register of all licenses and permits issued in each calendar year under the preceding sections of this Part, which shall contain such entries pertaining to the licensee or permittee and the issue and disposal, if any, of the license or permit as the Board shall direct to be entered therein.

Public inspection.

(2) Such register shall be open to public inspection on payment of the searching fee, if any, prescribed.

Extracts from register.

(3) Every extract from such register or copy of an entry or entries therein or statement that there is no entry therein, or that no license or permit has been issued in the name of any stated person and certified as to the correctness thereof by or over the signature of a member of the Board or the secretary shall, without proof of the signature of such member or the secretary, or of his official character, be prima facie evidence in all courts of this province of the facts therein stated.

PERSONS EXEMPTED

Who need no license.

160. (1) The foregoing sections of this Part shall not apply to any person who sells or offers for sale any security:

Governments, councils, boards, etc.

(*a*) as a member, official or employee, when in the performance of his duties as such, of the Government of Canada or of any Province or Territory of Canada, of a county, municipal or school council or board, of a local improvement, water, drainage, parks, or other like public board or district in Canada; or

Legal sales.

(*b*) at any judicial executor's, administrator's or guardian's sale, or at any sale by a receiver or trustee in insolvency or bankruptcy; or

Pledgee.

(*c*) by or for the account of a pledge-holder or mortgagee acting in the ordinary course of his business and to liquidate a bona fide debt, if the security sold or offered for sale was pledged in good faith as security for such debt; or

Company distributions.

(*d*) in the distribution by a corporation of capital stock, bonds or other securities to its stockholders or other security holders as a stock dividend or other distribution out of earnings, surplus or capital; or the issue of securities to the security holders or other creditors of a corporation in the process of a bona fide reorganization of such corporation made in good faith, or the issue of increased capital stock of a corporation sold or distributed by it entirely among its own stockholders, where no commission or other remuneration is paid or given, directly or indirectly, in connection with the sale or distribution of such increased capital stock; or

Sales by banks, brokers, etc.

(*e*) in the sale, transfer or delivery of any bank, loan company, trust company, insurance company or to any broker or dealer; provided, that such broker or dealer is actually engaged in buying and selling securities as a business, and is licensed hereunder so to sell; or

Company mergers.

(*f*) in the transfer or exchange by one corporation to another corporation of their own securities in connection with a consolidation or merger or such corporations; or

Single transaction by exempted company.

(*g*) in an isolated transaction in which any security of a corporation or company referred to in the next following section is sold, offered for sale, subscription or delivery, under the provisions of said section, by the owner thereof, or by his representative for the owner's account, such sale or offer for sale, subscription or delivery not being made in the course of continued and successive transactions of a like character by such owner, or on his account by such representative; or

Trustee securities.

(*h*) in which a trustee may lawfully invest trust funds.

Discretion of Board.

(2) The foregoing sections of this Part shall not apply to a person who is offering for sale shares or securities for the sale of which in the opinion of the Board no license should be required and the Board so orders.

SALES OF SECURITIES

Application.

161. Subject to what is contained in this section the provisions of this Part following this section shall not apply:

Government, municipal, etc., securities.

(*a*) to the sale of any debentures, bonds, stocks or other securities issued or guaranteed by the Dominion of Canada or by any Province thereof, or by the government of any foreign country, or issued by any county, city, town, village, municipality, school district or local improvement, water, telephone, irrigation, hospital, parks or drainage district or board in any Province or Territory of Canada; or

Certain corporations.

(*b*) to the debentures, bonds, stocks or securities of any corporation or company incorporated by or under the authority of the Parliament of Canada or of the Legislature of this Province or licensed under "The Companies Act" or "The Manitoba Insurance Act," or subject to taxation under "The Corporations' Taxation Act" or "The Railway Taxation Act," if and only when any such corporation or company, or its officers or agents, or any person who owns shares, stocks, bonds or securities thereof, sells or attempts to sell any such debentures, bonds, stocks or securities otherwise than in the course of continued and successive acts of a like character. The printing, publication, or advertisement in any newspaper, magazine or other periodical, or by any other means of display whatsoever, or the issue, putting forth or distribution of any advertisement, circular letter or other paper containing any offer to sell or solicitation to purchase or intimation of the fact of the issue of any of such shares, bonds, stocks or other securities, or solicitation by agents or employees, shall be evidence of an attempt to sell in the course of such continued and successive acts and in violation of this Part. Pursuant to any such or other evidence of an attempt to sell or of sales made of any of its securities by any such corporation or company or its officers or agents in the course of such continued and successive acts, the Board may order that the immunities provided by this section shall no longer apply to the securities of the corporation or company concerned and thereupon such corporation or company and its securities shall be subject to the following and its officers and agents to the foregoing, sections of this Part.

(c) to the sale of any debentures, bonds, stocks or other securities of or issued, allocated or guaranteed by any corporation, loan company or building society in the debentures, bonds, stocks or other securities of which a trustee may lawfully invest any trust fund. Trustee securities.

162. No person, firm or corporation shall sell or offer or agree to sell, or directly or indirectly attempt to sell, in Manitoba, any shares, stocks, bonds or other securities of or issued by any company unless the company has first been approved by the Board as one of the securities of which are permitted to be sold in Manitoba and a certificate to that effect, as hereinafter provided, issued by the Board. Company to be approved by Board.

PROCEDURE TO OBTAIN PERMISSION TO SELL

163. (1) Every company or any person desiring to sell any shares, stocks, bonds or other securities of any kind or character of a company, shall, before offering or attempting to sell the same, apply to the Board upon such form as it shall provide, for its permission so to do and file in the office of the Board, together with the filing fee prescribed, the following:— Material to be filed.

(a) a statement of the name and location (head office, etc.) and the place (state, province, etc.) of the incorporation or registration of the company;

(b) an itemized account of the actual financial condition of the company and the amount of its property and liabilities, and such other information touching the affairs of the company as the Board may require;

(c) a statement showing in full detail the plan upon which the company proposes to transact business; and

(d) a copy of all contracts, bonds or other instruments which it proposes to make with or sell to its contributors.

(2) In the case of a partnership or an unincorporated association, it or such person shall also file with the Board a copy of its articles of co-partnership or association, and all other papers pertaining to its organization. Partnerships.

(3) If the company, whether incorporated or unincorporated, is not organized under the laws of this Province, it or such person shall also file with the Board a copy of the laws of the state, province, country, territory or government under which it exists or is incorporated, and also a copy of its charter, articles of incorporation, constitution and by-laws and all amendments thereof which have been made and all other papers pertaining to its organization. Extra-provincial corporations.

164. (1) All of the above described papers shall be verified by oath of a member, in the case of an unincorporated partnership or company, or by the oath of a duly authorized officer, if it be an incorporated company. All such papers, however, as are recorded or are on file in any public office shall be further certified to by the officer of whose records or archives they form a part, as being correct copies of such records or archives. Verification.

(2) No amendment of the charter, articles of incorporation, constitution or by-laws of any company not organized under the laws of this Province shall be come operative in Manitoba until a copy of Charter amendments.

the same has been filed with the Board as provided in regard to the original filing of charters, articles of incorporation, constitution and by-laws.

(3) A company shall not transact business on any other plan than that set forth in the statement required to be filed under the last preceding section, or make any contracts other than those shown in the copy of the proposed contracts required to be filed by said section, until a written statement, showing in full detail the proposed new plan of transacting business, and a copy of the proposed new contract shall have been filed with the Board, in like manner as provided in regard to the original plan of business and proposed contract, and the consent of the Board, obtained as to making such proposed new plan of transacting business and proposed new contract.

Consent to action against company.

165. Every company not organized under the laws of this Province, shall also file its written consent, irrevocable, that actions may be commenced against it in the proper court of any judicial district or judicial division in which a cause of action may arise or in which the plaintiff may reside, by the service of process on the Provincial Secretary, and stipulating and agreeing that such service of process on the Provincial Secretary shall be taken and held, in all courts, to be as valid and binding as if due service had been made upon the company itself, according to the laws of this or any other Province, and such instrument shall be authenticated by the seal of said company and by the signature of a member in the case of an unincorporated partnership or company, or by the signatures of the president and secretary if it be an incorporated company, and shall be accompanied by a duly certified copy of the order or resolution of the board of directors, trustees or managers of the company authorizing the said secretary and president to execute the same.

DUTIES OF BOARD

Examination of material filed.

166. (1) The Board shall examine the statements and documents so filed, and if deemed advisable, make or have made a detailed examination of such company's affairs, which examination shall be at the expense of such company or person desiring to sell the said shares, stocks, bonds or other securities, as hereinafter provided; and if the Board finds that such company is solvent, that its articles of incorporation or association, its constitution and by-laws, its proposed plan of business and proposed contracts contain and provide for a fair, just and equitable plan for the transaction of business, and in the judgment of the Board, promise a fair return on the shares, stocks, bonds and other securities by it or by such person offered for sale, the Board may issue to such company or person a

Certificate.

certificate reciting that such company has complied with the provisions of this Act, that detailed information in regard to the company and its securities is on file in the office of the Board for public inspection and information, that such company is permitted to sell its securities in this province, and such certificate shall also recite in bold type that the Board in no wise recommends the securities to be offered for sale by such company.

When certificate refused.

(2) If the Board finds that such articles of incorporation or association, charter, constitution and by-laws, plan of business or proposed contracts contain any provisions that are unfair, unjust,

inequitable or oppressive to any class of contributors, or if it decides from its examination of its affairs that said company is not solvent and does not intend to do a fair and honest business, and in the judgment of the Board does not promise a fair return on the shares, stocks, bonds or other securities by it or by such person offered for sale, then the Board shall notify such company or person in writing of its findings, and it shall be unlawful for such company, or any agent on its behalf, or any such person, to sell or offer for sale in this province any of such shares, stocks, bonds or other securities, until the company shall so change its constitution and by-laws, articles of incorporation or association, its proposed plan of business and proposed contracts and its general financial condition in such manner as to satisfy the Board that it is solvent, and that its articles of incorporation or association, its constitution and by-laws, its proposed plan of business and proposed contracts provide for a fair, just and equitable plan for the transaction of business, and that it does, in the judgment of the Board, promise a fair return on the shares, stocks, bonds and other securities by it or by such person offered for sale.

Report of expenses.

(3) All expenses paid or incurred, and all fees or charges received or collected for any examination made under the provisions of this section of this Act, shall be reported in detail by the Board to such company or person and a full report and record thereof made in the books of the Board.

Limited Certificate.

(4) Upon any application made to the Board it may grant a certificate under this Act in respect of any class or classes of stocks, bonds, shares or securities of a company, and exclude the others therefrom.

DEVELOPMENT STOCK

Application for special certificate.

167. (1) For the purpose of facilitating commercial, industrial and mining undertakings in Manitoba, including boring for oil, gas, salt or other natural deposits, it is enacted that whenever it shall appear that a company, whose undertaking, being of the nature aforesaid, has not been developed, and that it is therefore not known that a fair return is promised upon its shares, stocks, bonds or securities, so as to justify the issuing of a certificate under the last preceding section, such company may apply for a special certificate, in respect of shares, stocks, bonds or securities, and permitting the offer by the company to the public for purchase of shares, stocks, bonds or securities of the company.

When granted.

(2) The Board may grant such special certificate upon the company establishing to its satisfaction that the proceeds of all sales of the unissued stock or securities of said company will be paid to an incorporated or licensed trust company, or other trustee, in Manitoba, approved of by the Board, less a deduction in the Board's discretion for commission for the sale of such stock and reasonable expenses incident to the office management of the company and advertising, and in trust to apply such net proceeds to the development or operation of the undertaking or the company only.

Prospectus.

(3) Before such special certificate is granted the Board shall require a prospectus to be filed with it setting forth the amount paid for the property in cash or in stock, the amount of vendors' and treasury stock, the names of the directors of the company, and a

description of the property, with such reports in full as are available. All advertising must conform to the facts set forth in the prospectus and must specify that the prospectus is on file for reference at the office of the Board.

Stock other than for development purposes.

(4) Any such company may apply for and obtain a special certificate allowing the sale of its shares, stocks, bonds or securities other than development shares upon filing proof with the Board that the development work referred to in this section and so far carried out has demonstrated that there is a reasonable prospect of a return on the investment to the purchaser of such shares, stocks, bonds or securities.

"Development Stock" on share certificate.

(5) Certificates for shares offered for sale pursuant to the provisions of subsection (2) of this section and all certificates for such shares subsequently issued upon successive transfers thereof shall have conspicuously written or printed on the face of them the words "Development Stock".

Stipulations, etc.

(6) Any stipulation, condition or restriction imposed by any such special certificate or made the basis of the grant thereof may be invoked by any person who purchased shares, stocks, bonds or securities of the nature described therein, as if such stipulation, condition or restriction were assumed by contracts made with him by the company or persons upon whom such stipulation, condition or restriction has been imposed.

Prohibition.

(7) Such special certificate shall not authorize the sale of such shares, stocks, bonds or securities comprised in such special certificate by any person other than the company issuing the same, and such sale shall not be made by any other persons, until a certificate shall have been granted in respect of the shares, stocks, bonds or securities of the company under section 166 hereof.

HEARINGS BY FULL BOARD

When application to quorum.

168. (1) If any application for a license or certificate or special certificate which may be issued under this Part is heard by a quorum of the Board in the first instance and such quorum after hearing and consideration is unanimous as to the determination which should be made thereof, the determination made accordingly shall be final and shall be acted upon by the Board.

Disagreement of quorum or inquiry by single member.

(2) If such quorum is not agreed as to the determination which should be made, or if the application is in the first instance inquired into by a single member of the Board and it is his opinion that the license, certificate or special certificate should not be issued, a report thereof in detail shall be made to the Board; the applicant in either such case shall be notified accordingly and if he requests a hearing of the full Board a time shall be fixed for such hearing.

Determination by full Board.

(3) At such time or subsequent time or times, if any fixed by adjournment, any vacancy or vacancies in the Board having in the meantime been filled in the manner hereinbefore provided for, the Board, all the members thereof being present, after hearing and consideration shall determine the matter, and the decision of two members thereon shall be final and shall be acted upon by the Board.

Appeal.

(4) Nothing in this section shall be construed as taking away the right of appeal hereinbefore provided.

AGENTS

Company agents.

169. Any company or person having obtained the Board's certificate or special certificate referred to in the preceding sections may appoint one or more agents to sell the shares or securities of the company, but no such agent shall do any business of the nature aforesaid for said company or person in this province until he shall obtain a license under, and otherwise comply with, the provisions of this Part relating thereto.

RETURNS BY COMPANIES

Annual and other returns.

170. (1) Every company respecting which a certificate or special certificate has been issued under the foregoing provisions shall file with the Board, at least once in every period of twelve months, and at such other times as required by the Board, a statement verified by the oath of a member of the company, if it be a partnership or unincorporated, or by the oath of a duly authorized officer, if it be an incorporated company, setting forth in such form as may be prescribed by the Board, its financial condition and the amount of its assets and liabilities, and furnishing such other information concerning its affairs as the Board may require. Each such statement shall be accompanied by the filing fee prescribed hereunder.

Penalty.

(2) Any such company failing to file such statement as aforesaid, or failing to file any other or special report herein required within thirty days after receipt of request or requisition therefor, shall forfeit its right to continue its business of selling its shares, stocks, bonds or other securities in this province, and no person shall thereafter sell or offer to sell any of the shares, stocks, bonds or other securities of such company.

SPECIAL POWERS OF BOARD

Improper management of company.

171. (1) Whenever it shall appear to the Board that the assets of any company respecting which a certificate or special certificate has been issued hereunder have become impaired to the extent that such assets do not equal its liabilities or that it is conducting its business in an unsafe, inequitable or unauthorized manner, or is jeopardizing the interest of its stockholders or investors in shares, stocks, bonds or other securities by it offered for sale, or whenever any such company shall fail or refuse to file any papers, statements or documents required by this Act, without giving satisfactory reasons therefor, the Board may suspend or revoke such certificate or special certificate, as the case may be.

Report to Attorney-General.

(2) The Board shall also at once communicate the facts relating to company aforesaid to the Attorney-General, who may thereupon apply to or authorize the Board to apply to the Court of King's Bench, or a judge of said court, for the appointment of a receiver to take charge of and wind up the business of such company, and if such fact or facts be made to appear it shall be sufficient evidence to authorize the appointment of a receiver and the making of such orders and decrees in such cases as the said court or judge may seem meet.

Examination of companies by Board.

172. (1) Every company to which this Part applies shall, as to matters within the jurisdiction of this Legislature, be subject to examination by the Board, or its duly authorized officer or officers,

at any time the Board may deem it advisable, and the Board may for that purpose exercise the powers of investigation, and powers incidental thereto, specified in Parts I and III of this Act and the rules made thereunder, and if the Board shall see fit it may order that such company, or any applicant for such examination, shall pay the costs and expenses of such examination, to be fixed by said Board.

Costs and expenses.

(2) Such and all other costs and expenses under this Part may be recovered in the manner authorized for the recovery of costs and expenses under said Parts and in addition thereto the failure or refusal of any such company to pay such costs and expenses shall be sufficient cause for the revocation of any certificate or special certificate issued to it or license granted hereunder to any of its agents.

SUSPENSIONS AND REVOCATIONS

General power of revocation.

173. (1) In case of the violation of or failure to observe any terms of any application or undertaking, information or report made or furnished to obtain any authorization, license, permit, certificate or special certificate granted or issued under this Part, or the violation of or failure to observe any condition, restriction or stipulation therein or to which any of the same is subject, or for any cause in this Part set out or which seems to it sufficient, the Board may revoke any such authorization, license, permit, certificate or special certificate.

Suspension.

(2) The Board, or its chairman, may of its or his own motion, or upon the complaint of any person, suspend any such authorization, license, permit, certificate or special certificate for such period as may be expedient pending inquiry by the Board. Notice of such suspension shall be given the person or company affected forthwith. During such period the Board shall inquire into the circumstances or complaint, at which inquiry such person or company and other persons having knowledge of such circumstances or complaint may be heard. If, as a result of its inquiry, or if the person or company affected takes no steps to have the suspension revoked or consents in writing, or orally before the Board, to any order relating thereto the Board may deem it advisable to make, the Board may withdraw such suspension or revoke the authorization, license, permit, certificate or special certificate of such person or company and take such proceedings as may be deemed requisite as regards the enforcement of the bond, if any, furnished by or for a licensee affected thereby.

Effect.

(3) During any such suspension and after any such revocation the person or company affected shall be deemed not to be the holder of the authorization, license, permit, certificate or special certificate, as the case may be, so suspended or revoked.

Publication.

(4) The fact of any such revocation made by the Board may be published by it in *The Manitoba Gazette* and in such other manner as the Board deems expedient.

Notice to person affected.

(5) Notice of every such revocation shall be served upon the person or company affected, if he or it can be located, unless he or it was present or represented at the inquiry when the revocation was determined upon or made, and after such revocation or suspension any securities sold by or on behalf of such person or company shall be held to have been sold unlawfully and in violation of this Part.

REMEDIES OF PURCHASER

174.(1) The purchaser of any shares, stock or other securities sold in violation of this Part, unless at the time of such purchase he had or upon reasonable grounds should have had knowledge of such violation, may, within one year after such purchase, by notice in writing to the Board (receipt of which notice shall be forthwith given by the Board to the company, if it can be located, whose securities were so purchased) disavow his liability thereunder. Disavowal of liability.

(2) By such disavowal such purchaser shall have and is hereby granted a right of action against the company, the shares, stock or securities of which were so purchased, and the salesman who sold the same, for the recovery of any moneys paid by him to such company or on its behalf to the salesman in respect of such purchase prior to his knowledge that the same was made in violation of this Part (less such amount as he may have received or be entitled to receive under any bond furnished by or for the salesman), which right of action shall be exercised within two years from the date of such purchase, or within such further period as may be fixed by a judge of the court within the jurisdiction of which the action may be brought. Action for money paid.

(3) Such disavowal shall also be, and may be pleaded as a defence to any action against such purchaser to recover any unpaid balance of the purchase price or call or calls in respect of shares, stock or securities applied, subscribed or contracted for by him in such purchase. Defence if sued for balance.

ADVERTISEMENTS

175. No printer, publisher, newspaper proprietor or other person shall print, publish or advertise in this Province, in any newspaper, magazine or other periodical printed and published in this Province, or otherwise in this Province issue, put forth or distribute, any advertisement, circular, letter or other document containing any offer to sell or solicitation to purchase any bonds, debentures, shares, stock or other securities, unless the company, corporation, association or syndicate whose bonds, debentures, shares, stocks or other securities so offered for sale shall have first obtained from the Board the certificate or special certificate hereinbefore provided for. Printing to be only after certificate issued to company.

176. The Board may in its discretion give such publicity or advice to the public in *The Manitoba Gazette* or otherwise as it deems advisable respecting securities which in its opinion should not be sold in the Province. Publicity by Board.

PENALTIES

177. Any person who shall do anything forbidden by or in violation of this Part or declared by this Part to be unlawful, for which no other penalty is provided shall, on summary conviction, be liable to a fine of not less than fifty dollars, nor more than five hundred dollars, with costs, and, in default of payment, to imprisonment for a term not exceeding six months. General penalty.

INVESTMENT BROKERS

178. (1) In order to preserve the facilities for investment in bonds, stocks, shares and securities of reputed value, it is declared that the Board may, on application supported by such evidence as it may require, grant special license to persons, firms or corporations Special licenses for recognized bond dealers.

who are members of the Winnipeg Stock Exchange or of the Investment Bankers' Association of Canada and may on application supported by such evidence as it may require grant special licenses to any persons, firms or corporations, of known responsibility who or which are permanently established in this Province, whose business includes that of brokers or financial agents, exempting in either case the special licensee therein named and their officers, employees, or salesmen and the transactions and dealings in securities instituted or carried out by them, during the continuance of such special license, from all the provision of Part IV of this Act, and section 175 hereof shall not apply to the advertisements of any such special licensee.

Registration of officials.

(2) All active officers, employees or salesmen of such special licensees shall be registered with the Board, in manner directed by the Board, and any officer, employee or salesman not so registered shall not be entitled to said exemption.

Suspension and cancellation of special licenses.

(3) In case it shall be made to appear to the Board that any licensee shall have disposed of fraudulent or worthless bonds, stocks, shares or securities, the Board shall have power, without hearing, to suspend and after notice and inquiry to rescind, cancel or reinstate such special license or to revoke and cancel or reinstate the registration of any officer, employees or salesmen so offending.

Exception of specified securities.

(4) The Board may at the time of issue of such special license or subsequently by its order, except from the said exemption the bonds, stocks, shares and securities of any designated corporation, syndicate or firm, or bonds, stocks, shares or securities of any particular class.

Fees.

(5) The fee for such special license shall be the sum of twenty-five dollars and the fee for the registration of the officers, members and employees shall be five dollars for each person so registered.

REPEAL

C.A. c. 175 repealed.

179. (1) "The Sale of Shares Act" with all its amendments is hereby repealed.

Citations.

(2) Notwithstanding such repeal any citation in a statute or reference in any agreement or contract enforceable in this Province to "The Sale of Shares Act" shall be deemed a citation of or reference to this Part.

(3) If this Part is proclaimed to come into force before the Board provided for in Part I is appointed, this Part shall be administered by the Public Utility Commissioner, who shall have all the powers of the Board under this Part. For the purposes of section 168 the Lientenant-Governor-in-Council may appoint two persons who with the said commissioner shall have the powers of the Board under said section until the Board provided for in Part I is appointed. In the event of this Part being proclaimed to so come into force the definition of Part I shall be applicable to this Part and any fees referred to in this Part may be fixed by Order of the Lieutenant-Governor-in-Council, which fees shall have effect until others are prescribed by the Board.

BRITISH COLUMBIA

1929, Chapter 25

An Act Respecting Companies

Division (2)—Commencement of Business by Public Company

40. (1) A public company which does not issue a prospectus on or with reference to its formation or organization for business shall not allot any of its shares or debentures or commence any business or exercise any borrowing-powers, unless the company has filed with the Registrar a statement in lieu of prospectus according to Form 3 in the Second Schedule, and the Registrar has issued under his seal of office a certificate that the company is entitled to commence business. Restrictions on company where prospectus not issued.

(2) Where the statement in lieu of prospectus contains particulars of any contract under which shares or debentures are to be allotted by the company as the consideration for property or for services or other consideration than cash, the contract or, where the contract is not reduced to writing, full and exact particulars of the contract shall be filed with the statement in lieu of prospectus.

(3) The Registrar shall, on the filing of the statement in lieu of prospectus and such contract or particulars as are mentioned in subsection (2), issue under his seal of office a certificate showing that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(4) For the purposes of Form 3 in the Second Schedule, the expression " vendor " shall have the meaning assigned to it by subsections (4) and (5) of section 127.

(5) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(6) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(7) Every company which acts in contravention of this section shall be guilty of an offence against this Act.

(8) A company which has filed a prospectus under section 41, but has not proceeded to allot any shares or debentures offered by that prospectus, and determines not to make a fresh offer of shares or debentures to the public, may proceed under this section.

(9) This section shall not apply to a company incorporated before the first day of July, 1910, or to a company which has under any former Companies Act or this Act obtained a certificate entitling it to commence business, or to a company which has before the commencement of this Act filed with the Registrar a statement in lieu of prospectus under the " Companies Act, 1921," but has not obtained under that Act a certificate entitling it to commence business, and such last-mentioned company shall, notwithstanding section 255, comply with and be subject to sections 33 to 36 of that Act, R.S., 1924, c. 38, ss. 31, 33.

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Restrictions on company where prospectus issued.

41. (1) A public company which issues a prospectus on or with reference to its formation or organization for business shall not allot any shares or debentures or commence any business or exercise any borrowing-powers, unless:—

(*a*) The company has filed the prospectus with the Registrar; and

(*b*) The requirements of section 128 have been complied with; and

(*c*) The company has filed with the Registrar a statutory declaration as prescribed by section 42; and

(*d*) The Registrar has issued under his seal of office a certificate that the company is entitled to commence business.

(2) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of shares and debentures.

(3) Subsections (5) and (6) of section 40 shall apply to a company to which this section applies.

(4) Every company which fails to comply with or contravenes any provision of this section shall be guilty of an offence against this Act.

(5) This section shall not apply to a company incorporated before the first day of July, 1910, or to a company which has obtained under any former Companies Act or this Act a certificate entitling it to commence business, or to a company which has before the commencement of this Act filed with the Registrar a prospectus under the "Companies Act, 1921," and has not on or before that date obtained a certificate entitling it to commence business, but such last-mentioned company shall, notwithstanding section 255, comply with and be subject to sections 33 to 36 of that Act. R.S. 1924, c. 38, s. 31.

Issue of certificate to commence business.

42. (1) When the minimum subscription fixed by a prospectus to which section 41 refers has been subscribed, it shall be the duty of the directors named in the prospectus to make a statutory declaration according to Form 4 in the Second Schedule, and the company shall file the declaration within one month from the date on which the minimum subscription is subscribed:

Provided that where a director is by reason of his absence from the Province or for other good reason prevented from performing his duties as a director in relation to the organization of the company pursuant to this Division, he shall not be required to make the statutory declaration aforesaid, but in lieu thereof a director or other officer of the company acquainted with the facts shall make a statutory declaration stating why that director was prevented from so performing his duties as a director.

(2) Upon compliance with this section, the Registrar may issue under his seal of office a certificate that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled. R.S. 1924, c. 38, s. 33.

Certain contracts not to be varied before statutory meeting.

43. A public company shall not previously to the statutory meeting vary the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of that meeting. R.S. 1924, c. 38, s. 35.

Certain shares, etc., not to be dealt with before statutory meeting.

44. (1) No shares or debentures of a public company allotted or issued or agreed to be allotted or issued to any person who is or has been engaged or interested in the formation or promotion of the company for property, services, or any consideration other than cash shall be transferred, sold, or in anywise dealt with or disposed of before the statutory meeting of the company is held pursuant to this Act, and no certificate of any such share or debenture shall be issued or delivered by the company until that meeting is held.

(2) A transfer, sale, or other dealing in or disposition of shares or debentures contrary to this section shall be void.

(3) Every company and person who contravenes this section shall be guilty of an offence against this Act, and the directors of the company shall be liable to compensate the company and any person injured for any loss, damage, or costs which the company or such person may have sustained or incurred by a contravention of this section:

Provided that:—

(*a*) A director shall not be liable if he proves that the contravention was not due to any misconduct or negligence on his part; and

(*b*) Proceedings to recover any such loss, damage, or costs shall not be commenced after the expiration of two years from the date of the contravention. R.S. 1924, c. 38, s. 36.

Statutory meeting and statutory report.

45. (1) Every public company shall, within two months from the date at which the company becomes entitled to commence business, hold a general meeting of the company at which all members and all persons to whom shares have been allotted or whose applications for shares have been accepted shall be entitled to be present.

(2) The directors shall, at least seven days before the day on which the meeting is held, forward to every member of the company, and to every other person entitled under this section to receive it, a report certified by not less than two directors of the company and made up to a date not more than seven days before the date of the notice of the statutory meeting, and shall at the same time cause authenticated copies of the report and notice to be filed with the Registrar.

(3) The report shall state:—

(*a*) The total number of shares or debentures allotted, distinguishing shares and debentures allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares or debentures partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) The total amount of cash received by the company in respect of all the shares and debentures allotted, distinguished as aforesaid;

(*c*) An abstract of the receipts of the company, and the payments made thereout, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) The full names, addresses, and occupations of the directors, auditors (if any), managers (if any), and secretary of the company; and

(*e*) The particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The report shall, so far as it relates to the shares and debentures allotted by the company, and to the cash received in respect thereof, and to the receipts and payments of the company, be certified as correct by the auditors (if any) of the company.

(5) The directors shall cause a list showing the full names, addresses, and occupations of the members and of all other persons entitled to be present at the meeting, and the number of shares or debentures held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(6) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, and to pass any ordinary resolution, whether previous notice has been given or not.

(7) The meeting may adjourn from time to time, and an adjourned meeting shall have the same powers as an original meeting.

(8) Every company which makes default in complying with any requirement of this section shall be guilty of an offence against this Act: Provided that the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that such default was accidental or due to inadvertence, or that on other grounds it is just and equitable to grant relief, may make an order extending the time for compliance with this section for such period as the Court may think proper.

(9) Where an order is made under this section, an office copy thereof shall be filed with the Registrar at the same time as a meeting is called or a report is filed, as the case may be, pursuant to the order. R.S. 1924, c. 38, s. 34"

Prohibition of issue of forms of application unless prospectus is issued.

115. (1) It shall not be lawful to issue any form of application or subscription for shares in or debentures of a company offered to the public unless the form is issued with a prospectus filed under section 126 or 129:

Provided that this section shall not apply if it is shown that the form of application was issued either:—

(*a*) In connection with a bona-fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or

(*b*) In relation to the shares in or debentures of a company where there is no offer to the public; or

(*c*) To existing members or debenture-holders of a company, whether an applicant for shares or debentures had or had not the right to renounce in favour of other persons.

(2) Every person who acts in contravention of this section shall, without prejudice to any other liability, be guilty of an offence against this Act. (New).

Restrictions on allotments of shares for consideration other than cash.

116. A public company which is required to obtain under section 40 or 41 a certificate entitling it to commence business and a private company which is converted under section 70 into a public company shall not allot within a period of three months from the date of the certificate issued to the company under one of those sections, as the case may be, or such longer period as the Registrar may for the purposes of this section fix, any shares as the consideration for property or services or other consideration than cash, unless particulars of the contract under which the shares are to be allotted are disclosed in the statement in lieu of prospectus or prospectus, as the case may be, filed in pursuance of one of those sections, and the contract or, where the contract is not reduced to writing, full and exact particulars of the contract are filed therewith, or until the company has filed with the Registrar a supplementary statement in lieu of prospectus according to Form 3 in the Second Schedule or a new prospectus in accordance with sections 126 or 129, disclosing in either case particulars of the contract, and has filed therewith the contract or full and exact particulars of the contract as aforesaid. (New).

Effect of irregular allotments.

117. (1) An allotment made by a company:—

(*a*) To an applicant or allottee in contravention of the provisions of section 40 or 41 shall be voidable at the instance of the applicant within two months after the holding of the statutory meeting of the company and not later; and

(*b*) In contravention of section 116 or 128 shall be void; and

(*c*) Upon an application in contravention of section 115 shall be void;

and every such allotment as is mentioned in clauses (*a*) and (*c*) shall be voidable or void, as the case may be, notwithstanding that the company is in course of being wound up.

(2) Every director of a company who knowingly contravenes or permits or authorizes the contravention of any provision of section 40, 41, 116, or 128 with respect to allotment, or who knowingly acts upon an application in contravention of section 115, shall be liable to compensate the company and the applicant or allottee respectively, as the case may be, for any loss, damages, or costs which the company or the applicant or allottee may have sustained or incurred thereby: Provided that:—

(*a*) A director shall not be liable if he proves that the contravention was not due to any misconduct or negligence on his part; and

(*b*) Proceedings to recover any such loss, damage, or costs shall not be commenced after the expiration of two years from the issue of the share. R.S. 1924, c. 38, s. 31.

Allotments of shares.

118. (1) Where a company makes any allotment of its shares, the company shall within one month thereafter file with the Registrar:—

(*a*) A return of allotments, stating in respect of each share the date of allotment, the distinctive number, nominal amount or par value (if any), or, in the case of a share without nominal or par value, the price at which the share is sold, and class of share, the full name, address, and occupation of the allottee, the amount paid, and the amount or rate (if any) of commission paid or agreed to be paid under section 123, or, in the case of a specially limited company, of discount allowed or agreed to be allowed under section 124; and

(*b*) In the case of shares allotted as fully or partly paid up otherwise than in cash, a return stating the number and nominal amount or par value (if any) of such shares, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted, together with any contract in writing constituting the title of the allottee to the allotment, and any contract of sale or for services or other consideration in respect of which that allotment was made, or, where such a contract as above mentioned is not reduced to writing, full and exact particulars of the contract, unless the contract or particulars thereof have already been filed with the Registrar.

(2) Where the company agrees to accept payment otherwise than in cash for shares subscribed for in the memorandum, or has allotted any shares payable in cash and subsequently agrees by such a contract as above mentioned to accept payment otherwise than in cash, the contract or (if the contract is not reduced to writing) full and exact particulars thereof shall be filed with the Registrar within one month from the date thereof.

(3) Every return of allotments shall be made according to Form 17 in the Second Schedule, and in the case of a contract not reduced to writing shall be accompanied by particulars according to Form 18 in the Second Schedule.

(4) Every company which makes default in complying with the requirements of this section shall be guilty of an offence against this Act:

Provided that:—

(*a*) Where the default in filing any document as required by this section does not exceed seven days, and appears to the Registrar from the explanation thereof made to him by or on behalf of the company to be accidental or due to inadvertence, or is due to the fact that the document requires to be rectified, the Registrar may file the document, and the company shall be deemed to have complied with the requirements that the document be filed within one month after allotment; and

(*b*) In any other case, the company, or any person liable for the default, may apply to the Court for relief, and the Court, if satisfied that the omission to file the document was accidental or due to inadvertence or that upon other

grounds it is just and equitable to grant relief, may make an order extending the time for the filing of the document for such period as the Court may think proper.

(5) Where an order is made under this section, an office copy thereof shall be filed with the Registrar at the same time as the document to which it relates. R.S. 1924, c. 38, s. 125.

Issue of debentures.

119. A company shall file with the Registrar, within one month after any issue of debentures is made by the company, a statement setting forth the date and amount thereof and the amount or rate per cent of any commission, allowance, or discount paid or made either directly or indirectly by the company to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, or for procuring or agreeing to procure subscriptions, whether absolute or conditional, for any of the debentures, but an omission to do this shall not affect the validity of the debentures issued: Provided that the deposit of any debentures as security for any debt of the company shall not for the purposes of this provision be treated as the issue of the debentures at a discount. R.S. 1924, c. 38, s. 93.

Specific performance of contract to take debentures.

120. A contract with a company to take up and pay for any debentures of the company may be enforced by an order for specific performance. R.S. 1924, c. 38, s. 106.

Power to issue redeemed debentures.

121. (1) Where either before or after the commencement of this Act a company has redeemed any debentures previously issued, the company, unless any provision to the contrary, whether express or implied, is contained in the articles or in any contract entered into by the company, or unless the company has, by passing a resolution to that effect or by some other act, manifested its intention that the debentures shall be cancelled, shall have, and shall be deemed always to have had, power to reissue the debentures, either by reissuing the same debentures or by issuing other debentures in their place, and on such a reissue the person entitled to the debentures shall have, and shall be deemed always to have had, the same priorities as if the debentures had never been redeemed.

(2) Where a company has power to reissue debentures which have been redeemed, particulars with respect to the debentures which can be so reissued shall be included in the balance-sheet of the company.

(3) Where a company has deposited any of its debentures to secure advances from time to time on current accounts or otherwise, the debentures shall not be deemed to have been redeemed by reason only of the account of the company having ceased to be in debit whilst the debentures remain so deposited.

(4) The reissue of a debenture or the issue of another debenture in its place under the power by this section given to or deemed to have been possessed by a company shall not be treated as the issue of a new debenture for the purposes of any provision limiting the amount or number of debentures to be issued. R.S. 1924, c. 38, s. 105.

Validity of perpetual debentures.

122. A condition contained in any debentures or in any deed for securing any debentures shall not be invalid by reason only that thereby the debentures are made irredeemable or redeemable only on the happening of a contingency, however remote, or on the expiration of a period, however long, any rule of equity to the contrary notwithstanding. R.S. 1924, c. 38, s. 104.

DIVISION (5).—PROSPECTUSES AND OFFERS TO THE PUBLIC

Filing of prospectuses.

126. (1) Every prospectus shall state on its face that a copy has been filed with the Registrar, and shall be dated, and such date shall, unless the contrary be proved, be taken as the date of issue of the prospectus.

(2) A copy of the prospectus as issued, signed at the end by every person who on the date of issue is a director or proposed director of the company, or by his agent authorized in writing, shall be filed with the Registrar within seven days from that date.

(3) The Registrar shall not file any prospectus unless this section is complied with.

(4) Every person and company which makes default in complying with the requirements of this section shall be guilty of an offence against this Act: Provided that any person or company liable for the default may apply to the court for relief, and the court, if satisfied that such default was accidental or due to inadvertence, or that on other grounds it is just and equitable to grant relief, may make an order authorizing the Registrar to file the prospectus in respect of which there has been default.

(5) This section shall apply whether the prospectus be issued by or on behalf of a company, or in relation to an intended company, or by or on behalf of any person who is or has been engaged or interested in the formation or promotion of a company, or, prior to the date of the statutory meeting, in the organization of a company. R.S. 1924, c. 38, s. 89.

Requirements as to prospectuses under s. 126.

127. (1) Every prospectus to which section 126 applies shall state:—

(*a*) The date of incorporation of the company; the address of its registered office; the extent of the liability of members, particulars of the capital authorized subscribed and paid up respectively, and of the kinds and classes of shares in the company, and their nominal or par value (if any), and the amount (if any) of the indebtedness of the company;

(*b*) Particulars of the plan of operations of the business which the company proposes to carry on by means of the proceeds of the subscription invited by the prospectus, and the place where the operations or business will be carried on, and where the prospectus is issued more than one year after the date of incorporation of the company, general information as to the business which has been carried on by the company and as to its property and assets:

(*c*) The number of shares or the amount of debentures offered by the prospectus, and the amount payable on the application for and the allotment of each share or debenture, and the amount or rate of any commission or discount to be allowed thereon:

(*d*) The amount fixed as the minimum subscription under section 128 on which the directors may proceed to allotment, with an account showing how that amount is estimated or calculated:

(*e*) The several amounts or estimated amounts paid or payable for preliminary expenses and for services rendered or to be rendered in relation to the formation or organization of the company, or as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares offered by the prospectus, or allowed or to be allowed as discount in respect of any debentures, or, in the case of a specially limited company, any shares, offered by the prospectus:

(*f*) Particulars of any property purchased or acquired by the company, or proposed to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the subscription invited by the prospectus, or has been within the last two preceding years or is to be paid for by shares or debentures, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the title or interest therein acquired or to be acquired by the company:

(*g*) The full name, address, and occupation of any vendor of property under clause (*f*) and in the case of a promoter the amount paid by him in cash, shares, or debentures for the property within the last two preceding years, and the amount (specifying separately the amount (if any) for good-will) paid or payable in cash, shares, or debentures to him for the property. Where there is more than one separate vendor, or the company is a sub-purchaser, particulars as to each vendor shall be stated: Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors:

(*h*) Where debentures are offered for subscription, particulars of the security which has been or will be created for those debentures, specifying the property (if any) comprised or to be comprised in the security and the nature of the title to the property:

(*i*) Particulars of any services rendered or to be rendered to the company which are to be paid by the company wholly or partly out of the proceeds of the subscription invited by the prospectus, or have been within the last two preceding years or are to be paid for by shares or debentures:

(*j*) The amount, other than the amount mentioned in clause (*g*), paid within the last two preceding years or intended to be paid to any promoter, with his name and address, and the consideration for any such payment, and the amount in cash subscribed by him for shares or debentures of the company or otherwise contributed by him to the company:

(*k*) Particulars showing:—

(i) Any special rights or restrictions attached to any shares offered by the prospectus:

(ii) The right of voting at meetings of the company:

(iii) The number of shares (if any) fixed by the articles as the qualification of a director:

(iv) Any provision in the articles as to the remuneration of the directors or manager (if any), and the remuneration paid or payable to any director:

(*l*) The full names, addresses, and occupations of the directors or proposed directors, and the amount in cash subscribed by each of them for shares and debentures of the company or otherwise contributed by each of them to the company:

(*m*) Full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; but this clause shall not apply in the case of a prospectus issued more than two years after the date on which the company is entitled to commence business, except as to the particulars relating to property proposed to be acquired by the company:

(*n*) The names and addresses of the auditors (if any) of the company;

(*o*) In the case of a second or subsequent offer of shares or debentures, separate particulars of:—

(i) The number or amount offered for subscription on each previous offer made within the last two preceding years, and the number or amount actually allotted, and the amount (if any) paid thereon;

(ii) The amount (if any) paid within the last two preceded years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or allowed or to be allowed a discount in respect of any debentures, or, in the case of a specially limited company, of any shares, and the rate or amount of any such commission or discount;

(*p*) Where the prospectus is issued more than one year after the date of the incorporation of the company, a copy of its last balance-sheet;

(*q*) The dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus.

(2) The information required by subsection (1) to be stated in a prospectus shall be contained in a separate part of the prospectus, commencing with the words "Statutory Information" in conspicuous type, and no other matter shall be included in that part of the prospectus: Provided that the information required by clauses (*b*) and (*c*) of subsection (1) may be stated in any part of the prospectus.

(3) (*a*) In the case of a prospectus issued by a company before it has obtained a certificate entitling it to commence business, the prospectus shall include in the "Statutory Information," as the case may be, one of the following statements, namely, either:—

This company has not yet obtained a certificate entitling it to commence business, and is not authorized to allot any shares or debentures, unless the minimum subscription stated in the Statutory Information set forth in this prospectus is subscribed and a certificate entitling the company to commence business is subsequently issued to the company under the "Companies Act." All money received by the company in respect of the minimum subscription will, in accordance with the "Companies Act," be held in trust by the company to be repaid if the minimum subscription is not subscribed; or

The minimum subscription stated in the Statutory Information has been subscribed, but this company has not yet obtained a certificate entitling it to commence business, and is not yet authorized to allot any shares or debentures.

Provided that where the minimum subscription named in the prospectus proposed to be filed has been subscribed before the prospectus is filed, and the statutory declaration prescribed by section 42 is filed with the prospectus, and the Registrar issues to the company a certificate entitling the company to commence business on the day on which the prospectus and declaration are filed with him, the prospectus may include in the Statutory Information the following statement, namely:—

The minimum subscription stated in the Statutory Information has been subscribed and a certificate entitling the company to commence business was issued to the company by the Registrar of Companies on the day of ,19 . (The date of filing may be stated.)

(*b*) Where a certificate entitling the company to commence business has been issued, the prospectus shall include in the Statutory Information a statement of the date of the certificate.

(4) For the purposes of this section, every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where:—

(*a*) The purchase-money is not fully paid at the date of issue of the prospectus; or

(*b*) The purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the subscription invited by the prospectus; or

(*c*) The contract depends for its validity or fulfilment on the result of that invitation.

(5) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase-money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(6) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus shall be void.

(7) In the event of non-compliance with or contravention of any requirement of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that:—

(*a*) As regards any matter not disclosed, he was not cognizant thereof; or

(*b*) The non-compliance or contravention arose from an honest mistake of fact on his part; or, if the non-compliance or contravention was in respect of matters which in the opinion of the Court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case reasonably to be excused:

Provided that, in the event of non-compliance with the requirements contained in paragraph (*m*) of subsection 1, no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(8) Subject to subsection (7), every company and person who fails to comply with or contravenes any requirements of this section shall be guilty of an offence against this Act.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

(10) The company shall furnish to every person who is invited to subscribe for any shares or debentures offered by the prospectus with a copy of the prospectus at the time when the invitation is made.

(11) Where the prospectus contains particulars of any contract under which shares or debentures are to be allotted by the company as the consideration for property or for services or other consideration than cash, the contract or, where the contract is not reduced to writing, full and exact particulars of the contract shall be filed with the prospectus.

(12) (*a*) This section shall not apply to the issue to existing members or debenture-holders of a company of a prospectus relating to shares in or debentures of the company, whether an applicant for such shares or debentures will or will not have the right to renounce in favour of other persons.

(*b*) In the case of an offer of debentures only, clauses (*j*) and (*k*) and, except with respect to payments to be made out of the proceeds of such offer, clauses (*f*), (*g*), and (*i*) of subsection (1) shall not apply. R.S. 1924, c. 38, s. 90.

Minimum subscription.

128. (1) The minimum subscription required to be named in a prospectus under section 127:—

(*a*) Shall be the minimum amount which in the opinion of the directors must be raised in order that the company may, with a reasonable prospect of success, carry out the plan of operations or conduct the business described in the prospectus; and

(*b*) Shall be reckoned exclusively of any amount payable to the company otherwise than in cash; and

(*c*) Shall only be expended for the operations or business set forth in the statement or prospectus, unless the company by ordinary resolution sanctions its expenditure for some other purpose.

(2) Unless the minimum subscription is subscribed before the issue of the prospectus, all money paid to and received by the company in respect of the minimum subscription shall be deposited as trust funds to its credit as trustee in a separate account in a branch or agency in the province of a bank, and the company shall hold and shall declare in its prospectus that it will hold all such moneys in trust to be repaid, if the minimum subscription is not subscribed, in accordance with this section. If any such money is not so deposited and held, the directors of the company shall be jointly and severally liable to repay the money with interest at the rate of six per cent per annum from the date when it was paid to the company by the subscriber: Provided that a director shall not be liable if he proves that the failure so to deposit and hold the money was not due to any misconduct or negligence on his part.

(3) Where the minimum subscription has not been subscribed at the expiration of ninety days after the issue of the prospectus, or any extension of time, not exceeding fifty days, which the Registrar may grant, or, in the case of a company which is required to obtain a certificate entitling it to commence business, where the minimum subscription has been subscribed but section 42 is not complied with, all money paid to and received by the company in respect of the minimum subscription shall be forthwith repaid to the subscribers without any deduction, but without interest; and if such money is not so repaid within ninety-eight days after the issue of the prospectus the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per centum per annum from the expiration of the ninety-eighth day: Provided that a director shall not be liable if he proves that the failure so to repay the money was not due to any misconduct or negligence on his part.

(4) No allotment of any shares or debentures offered by a prospectus issued by a company entitled to commence business or to carry on business as a public company shall be made, unless the minimum subscription so named in the prospectus has been subscribed and the minimum amount prescribed by section 113 has been paid to and received by the company in respect thereof.

(5) Every director who fails to comply with or contravenes any requirement of this section shall, without prejudice to any other liability, be guilty of an offence against this Act. R.S. 1924, c. 38, s. 31.

Offers to the public by underwriters and others.

129. (1) Where a company allots or agrees to allot any shares in or debentures of the company with a view to all or any of those shares or debentures being offered for sale to the public, and the whole consideration for such shares or debentures is not paid to the company at the date of the allotment or the offer for sale, whichever date is the earlier, any person who by a prospectus issued by him with respect to all or any of those shares or debentures makes an offer thereof to the public shall file with the Registrar a copy of the prospectus, signed and dated by him, and such date shall, unless the contrary be proved, be taken as the date of issue of the prospectus.

(2) Every such prospectus shall state on its face that a copy has been filed with the Registrar, and shall be so filed within seven days from the date of its issue.

(3) For the purposes of this section, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown:—

(*a*) That an offer of the shares or debentures, or of any of them, for sale to the public was made within six months after the allotment or agreement to allot; or

(*b*) That at the date when the offer was made the whole consideration to be received by the company in respect of the shares or debentures had not been so received.

(4) Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the prospectus is signed on behalf of the company or firm by an officer of the company or a partner of the firm, authorized in either case to sign the prospectus.

(5) A copy of the prospectus shall be furnished to the member of the public to whom the offer of any shares or debentures to which the prospectus relates is made at the time when the offer is made, and no subscription or application for any share so offered shall be taken unless the copy has been so furnished.

(6) Without prejudice to the liability (if any) of the person by whom the prospectus is issued in respect of misstatements contained in the prospectus or otherwise in respect thereof, any person accepting the offer made by the prospectus in respect of any shares or debentures shall as against the company have the same rights of rescission as if those shares or debentures had been offered to the public for subscription by the company, and as if such person were a subscriber for those shares or debentures; and section 132 shall, so far as it applies to a person who has authorized the issue of a prospectus, extend to a prospectus within the meaning of this section.

(7) Where a person (hereinafter called the "principal underwriter") to whom the company makes an allotment or agrees to make an allotment of shares or debentures within the meaning of subsection (1) sells or agrees to sell to any other person (hereinafter called a "sub-underwriter") all or any of those shares or debentures, and the sub-underwriter offers all or any of those shares or debentures to the public by a prospectus prepared or issued by the principal underwriter, the principal underwriter shall be primarily liable in respect of misstatements contained in the prospectus to any person accepting the offer made by the prospectus.

(8) Sections 126, 127, and 131 shall not apply to a prospectus under this section, and the expression "prospectus" in this section shall not include a notice, circular, advertisement, or other document which contains no statement, either of fact or opinion, relating to any property acquired or proposed to be acquired by, or to any business carried on or proposed to be carried on by, the company whose shares or debentures are offered for sale to the public within the meaning of this section.

(9) Every person who fails to comply with or contravenes any requirement of this section shall be guilty of an offence against this Act. (New).

House-to-house offers.

130. (1) It shall not be lawful for any person to go from house to house offering shares in or debentures of a company for subscription or purchase to the public or any members of the public, unless a prospectus has been issued with respect to the shares or debentures so offered and filed in accordance with sections 126 and 127.

(2) A copy of the prospectus shall be delivered to the member of the public to whom any such offer is made at the time when the offer is made at any house, and no subscription or application for any share so offered shall be taken unless the copy has been so delivered.

(3) Every company or person who fails to comply with or contravenes any requirement of this section shall be guilty of an offence against this Act.

(4) In this section the expression "house" shall not include an office used for business purposes. R.S. 1924, c. 38, s. 90.

Restrictions on publication and circulation of matter relating to shares or debentures.

131. (1) It shall not be lawful for a company, or for any person on its behalf, to publish or circulate any matter not amounting to a prospectus, but which expressly or by implication invites the public to subscribe for or purchase any shares in or debentures of the company, unless a prospectus has been issued with respect to such shares or debentures and filed in accordance with sections 126 and 127, and unless the matter published or circulated states that a prospectus has been so issued and filed and that copy of the prospectus will be furnished to every person who subscribes or applies for any such shares or debentures.

(2) Every company or person who fails to comply with or contravenes any requirement of this section shall be guilty of an offence against this Act. R.S. 1924, c. 38, s. 90.

Liability for statements in prospectus.

132. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who is with his consent named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face

thereof, or by reference incorporated therein or issued therewith, unless it is proved:—

(*a*) With respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe, that the statement was true; and

(*b*) With respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation: Provided that the director, person named as director, promoter, or person who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(*c*) With respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document;

or unless it is proved:—

(*d*) That having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(*e*) That the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(*f*) That after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Every person to whom clause (*d*), (*e*), or (*f*) of subsection (1) applies shall file with the Registrar a copy of any notice of withdrawal or public notice given by him, within seven days from the date of his notice.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who by reason of his being a director, or of his being named as a director or of his having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section:—

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company:

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him. R.S. 1924, c. 38, s. 92.

SASKATCHEWAN

EXTRACT FROM STATUTES OF SASKATCHEWAN, 1928-29

1928-29

CHAPTER 68

An Act for the Prevention of Fraud in connection with the Sale of Securities

(Assented to February 2, 1929)

His Majesty, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:—

Short title.

1. This Act may be cited as The Security Frauds Prevention Act, 1929.

Interpretation.

2. In this Act, unless the context otherwise requires, the expression:

"Broker."

(1) "Broker" means every person other than a salesman who engages either for the whole or part of his time directly or through an agent in the business of trading in securities and includes such officials of a company or partnership which trades in securities as may be designated by the regulations;

"Company."

(2) "Company" includes any association, corporation, company or other incorporated organization, whether acting as a trustee or not;

"Fraud."

(3) "Fraud," "fraudulent" or "fraudulent act," in addition to its ordinary meaning, includes:

(*a*) any intentional misrepresentation by word, conduct or in any manner of any material fact either present or past, and any intentional omission to disclose any such fact;

(*b*) any promise or representation as to the future which is beyond reasonable expectation and not made in good faith;

(*c*) any fictitious or pretended trade in any security;

(*d*) the gaining of, or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be unconscionable and unreasonable;

(*e*) generally any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser of any security as to the nature of any transaction or as to the value of such security;

(*f*) the making of any material false statement in any application, information, material or evidence submitted or given to the Attorney General, his representative or the registrar under the provisions of this Act or the regulations; or in any prospectus or return filed with the Provincial Secretary;

(*g*) the violation of any provision of this Act or of the regulations relating to the manner in which brokers or salesmen shall trade in securities and anything specifically designated in the regulations as coming within the meaning of this definition;

(*h*) any artifice, agreement, device or scheme to obtain money, profit or property by any of the means hereinbefore set forth or otherwise contrary to law;

(4) "Person" means an individual, partnership, association, syndicate and any unincorporated organization whether acting as a trustee or not; "Person."

(5) "Registrar" means the person appointed by the Lieutenant Governor in Council to act as registrar under the provisions of this Act and the regulations; "Registrar."

(6) "Regulations" means the regulations made from time to time by the Lieutenant Governor in Council under the provisions of this Act; "Regulations."

(7) "Salesman" means every person employed, appointed or authorized by any broker or company to trade in securities whether directly or through sub-agents; "Salesman."

(8) "Securities" includes subject to the provisions of subsection (3) of section 3, any document or instrument commonly known as a security, every documentary evidence of indebtedness or evidence representing or secured by some title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company, evidence of membership in an association of heirs or evidence of any option upon a security and anything designated as a security by the regulations; "Security."

(9) "Trade" or "Trading" includes subject to the provisions of subsection (3) of section 3, any disposition of, transaction in, or attempt to deal in, sell or dispose of a security or interest in or option upon a security for any valuable consideration, whether the terms of payment be upon margin, instalment or otherwise, and any underwriting of any issue or part of an issue of a security, the obtaining of a subscription to the capital stock of any organization, whether incorporated or not, and any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing or specifically designated as "trade" or "trading" in the regulations; "Trade."

(10) "Trustee" means a person, or a company, as the case may be, executing a trust expressly created by or declared in an instrument in writing other than a will or court order or judgment, where such trust is to carry on any business or to secure the payment or repayment of money. "Trustee."

Part I

Registration of Brokers and Salesmen

3. (1) No person shall: Brokers, officials and salesmen to register.

(*a*) trade in any security unless he is registered as a broker or salesman;

(*b*) Act as an official of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he or the partnership or company is registered as a broker;

(*c*) act as a salesman of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he is registered as a salesman;

and unless such registrations have been made in accordance with the provisions of this Act and the regulations; and any violation of this section shall constitute an offence.

Partnership or company may be registered.

(2) With the approval of the Attorney General, any partnership or company may be registered as a broker, whereupon the partnership or company may trade in securities, and the members and officials of the partnership, and the officials of the company other than branch managers or salesmen of the partnership or company, may act as such without separate registration, and the provisions of this Act, and of the regulations relating to registered persons or companies, shall be deemed to apply to such partnership or company.

Exemptions.

(3) Subsections (1) and (2) shall not apply to any person in respect of any of the following classes of trades or securities:

Judicial sales.

(*a*) a trade in a security taking place at a judicial, executor's, administrator's, guardian's or committee's sale, or at a sale by an authorized trustee or assignee, an interim or official receiver or a custodian under THE BANKRUPTCY ACT, a receiver under: THE KING'S BENCH ACT, or a liquidator under THE WINDING UP ACT of Canada or THE COMPANIES WINDING UP ACT OF SASKATCHEWAN;

Isolated transactions by owner.

(*b*) an isolated trade in a specific security by or on behalf of the owner, for the owner's account, where such trade is not made in the course of continued and successive transactions of a like character;

Banks, etc., Crown, municipal and public officials, etc.

(*c*) a trade where one of the parties is an official of a bank, loan company, trust company or insurance company, or is an official or employee, in the performance of his duties as such, of His Majesty in right of the Dominion or any province or territory of Canada or of any municipal corporation, or public board or commission in Canada or is registered as a broker under the provisions of this Act;

Sale by pledgee for debt.

(*d*) a trade by or for the account of a pledgee or mortgagee for the purpose of liquidating a *bona fide* debt by selling or offering for sale or delivery in good faith in the ordinary course of business a security pledged in good faith as security for such debt;

Stock dividends, etc.

(*e*) the distribution, issuance or sale by a company exclusively to the holders of its securities of capital stock, bonds or other securities as a stock dividend or other distribution out of earnings or surplus, or in the process of a *bona fide* reorganization of the company, or of additional capital stock where no commission or other remuneration is paid or given in connection therewith;

Exchange on merger.

(*f*) the exchange by or on account of one company with another company of its own securities in connection with a consolidation, amalgamation or merger of either company;

Prospector's "grubstake" or share in claim.

(*g*) a trade in good faith by an actual prospector of a security issued by him for the purpose of financing a prospecting expedition or for the purpose of disposing of any of his interest in a mining claim or property staked by or wholly or partly owned by him;

(*h*) securities in which trust funds may lawfully be invested in Saskatchewan; Trust.

(*i*) bonds or notes secured by mortgage upon real estate or tangible personal property where the entire mortgage, together with all of the bonds or notes secured thereby are sold at the one time; Secured bonds.

(*j*) negotiable promissory notes or commercial paper maturing not more than a year from the date of issue; Negotiable paper.

(*k*) securities evidencing indebtedness due under any contract made pursuant to the provisions of any statute of any province of Canada providing for the acquisition of personal property under conditional sales contracts; Securities based upon conditional sales.

(*l*) securities issued by a person or company organized exclusively for the promotion of art, science, charity, religion or other useful object, or for educational, benevolent, fraternal, charitable, or recreational purposes and not for pecuniary profit, where no part of the net earnings thereof enure to the benefit of any security holder; Shares of non-profit-sharing companies.

(*m*) any class of trade or security specifically exempted from the application of subsections (1) and (2) of this section by the regulations. Trades or securities exempted by regulations.

4. (1) Unless the Attorney General otherwise directs the registrar may within ten days after the receipt by him of any application for registration cause to be entered in a book kept for such purpose and open to public inspection, hereinafter called the "Register," the name and address for service of such applicant, whereupon such applicant shall be deemed to be registered as a broker or salesman as the case may be. Registration within ten days unless Attorney General objects.

(2) The registrar may upon the direction of the Attorney General or his representative authorized in writing cause a temporary entry to be made, designated as such, in the register, subject to cancellation at any time upon the order of the Attorney General. Temporary registration.

(3) Registrations shall expire, and may be changed or renewed as the regulations shall provide. Expiration, change and renewal of registration.

5. (1) Every application under this Act or the regulations shall be made in writing upon the forms provided by the registrar, and shall be accompanied by the fee prescribed by the regulations and such bond as may be required. Application to be upon forms with proper fees and bonds.

(2) Every applicant, whether domiciled in Saskatchewan or not, shall state in every application an address for service in Saskatchewan, and all notices under this Act or the regulations and all legal process issued by or on behalf of any person or company shall be sufficiently served for all purposes if posted by registered mail to the applicant at the latest address for service so stated, and in the case of a non-registered company where the officials are registered to the latest address of the person registered as the senior official of such company in Saskatchewan. Address for service.

(3) The registrar may from time to time and shall when so directed by the Attorney General require any further information or material to be submitted by any applicant or any registered person or company within a specified time and may require verification by affidavit or otherwise of any matter then or previously submitted. Further information.

Bond by broker and applicant.

6. (1) Every applicant for registration as a broker shall before registration submit a bond by the applicant or the person or company he represents as the registrar may require, such bond to be in the sum of $500 and in such form and upon such condition as the regulations shall prescribe.

Bond by a surety company if required.

(2) The registrar may and when so directed by the Attorney General shall require any applicant or any registered person or company within a specified time to deliver a bond by a surety company approved by the Attorney General or any other bond in such form and upon such conditions as the regulations shall prescribe, and in such amount as the regulations or the Attorney General shall require.

New bond.

(3) The registrar may and when so directed by the Attorney General shall require a new bond of the kind mentioned in subsections (1) or (2) to be filed within a specified time.

Forfeiture of bond.

7. (1) Any bond mentioned in section 6 shall be forfeit and the sum named therein shall become due and owing by the person or company bound thereby as a debt to His Majesty in right of Saskatchewan when there has been filed with the Registrar the Attorney General's certificate that the person or company in respect of whose conduct the bond is conditioned, or any official, employee or salesman of such company has, in connection with a trade in a security, been:

(*a*) in the case of the bond mentioned in subsection (1) of section 6:

(i) charged with any criminal offence; or,

(ii) found upon investigation by the Attorney General or his representative to have committed a fraudulent act; or

(*b*) in the case of the bond mentioned in subsection (2) of section 6:

(i) convicted of a criminal offence; or

(ii) convicted of an offence against any provision of this Act or the regulations; or

(iii) enjoined by the Court of King's Bench or a judge thereof otherwise than by an interim injunction.

Assignment of bond or payment of monies to creditors.

(2) The Attorney General may assign any bond forfeited under the provisions of subsection (1) or may pay over any moneys required thereunder to any person, or into the Court of King's Bench in trust for such persons and companies as may become judgment creditors of the person or company bonded, or to any trustee, custodian, interim receiver, receiver or liquidator of such person or company as the case may be, such assignment or payment over to be in accordance with and upon conditions set forth in the regulations or in any special order of the Lieutenant-Governor in Council.

Attorney General's orders concerning applications.

8. (1) The Attorney General may order that:

(*a*) any application for registration, renewal or change of registration shall or shall not be granted for any reason which he may deem sufficient;

(*b*) the application of any person for registration shall not be granted where it appears that such person proposes to use or is using a trading name other than his own, or that of his partner, where such trading name is apt to lead the public to believe it is that of a business firm of longer established standing in Saskatchewan, or is calculated to conceal from the public the identity of the applicant, or is for any reason objectionable;

(c) any temporary entry in the register shall be made, suspended or cancelled for any reason which he may deem sufficient;

(d) the registration of any person or company shall be suspended for any period or cancelled by reason of default in filing a bond when required under the provisions of subsections (2) and (3) of section 6;

(e) the registration of any person or company shall be suspended as provided in section 10;

and no order of the Attorney General shall be subject to review in any way in any court.

Entry of suspension or cancellation.

(2) The registrar upon receiving any order of the Attorney General suspending or cancelling any registration shall cause immediate entry thereof to be made in the register whereupon the suspension or cancellation shall become effective forthwith, but notice thereof and of the refusal of any application shall be sent to the person or company concerned.

Further applications.

(3) Notwithstanding any order of the Attorney General a further application may be made upon new or other material, or where it is clear that material circumstances have changed.

Part II

INVESTIGATION AND ACTION BY ATTORNEY GENERAL

Investigation by Attorney General.

9. (1) The Attorney General, or any person to whom as his representative he may in writing delegate such authority, may examine any person or thing whatsoever at any time in order to ascertain whether any fraudulent act, or any offence against this Act or the regulations has been, is being, or is about to be committed, and for such purpose shall have the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce documents, records and things as is vested in the Court of King's Bench or a judge thereof for the trial of civil cases, save that no person shall be entitled to claim any privilege in respect of any evidence or document, record or thing, sought to be given or produced, on the ground that he might be incriminated or exposed to a penalty thereby.

Failure to give information, etc., an offence and also *prima facie* evidence.

(2) The failure without reasonable excuse of any person or company to furnish information required by the registrar under Part I within the time limited, or the failure without reasonable excuse of any person summoned for examination under subsection (1) to appear or his refusal to give evidence, or to answer any question, or the failure without reasonable excuse or refusal of any person or company to produce anything where the evidence, answer or production would be required in an action shall constitute an offence and shall also be *prima facie* evidence upon which:

(a) the Attorney General, or his representative, may base an affirmative finding concerning any fraudulent act to which he may deem it relevant; or

(b) the Court of King's Bench, or a judge thereof, may grant an interim or permanent injunction; or

(c) a police magistrate may base a conviction for an offence against this Act or the regulations.

Evidence not to be disclosed.

(3) Disclosure by any person other than the Attorney General, his representative or the registrar, without the consent of any one of them, of any information or evidence obtained or the name of any witness examined or sought to be examined under subsection (1) shall constitute an offence.

Attorney General may

10. If the Attorney General or his representative upon investigation finds that any fraudulent act, or that any offence against this Act or the regulations, has been, is being, or is about to be committed, the Attorney General:

Suspend for over ten days.

(*a*) may where a registered broker, company or salesman is in his opinion concerned therein, order that the broker, company or salesman and any other registered broker, company or salesman connected with the same organization, be suspended from registration for any period not exceeding ten days; or

Proceed by injunction.

(*b*) may where he considers a suspension for ten days inadequate, or where any unregistered person or company is in his opinion concerned in such fraudulent act or in such offence, proceed under the provisions of section 11, or otherwise under this Act or the regulations; or

Give notice of fraud.

(*c*) may give notice of the fraudulent act to the public by advertisement or otherwise or to any individual by letter or otherwise, whenever he deems it advisable.

Power of court to enjoin from trading in securities.

11. (1) The Court of King's Bench or any judge thereof, upon the application of the Attorney General, where it is made to appear upon the material filed or evidence adduced that any fraudulent act, or any offence against this Act or the regulations has been, is being, or is about to be committed, may by order enjoin:

(*a*) any registered broker, company or salesman or any person or company implicated with any of them in the same matter from trading in any security whatever absolutely or for such period of time as shall seem just, and any such injunction shall *ipso facto* suspend the registration of any registered person or company named in the order during the same period; or

(*b*) any person or company from trading in any security whatever, or in any specific security, or from committing any specific fraudulent act or series of fraudulent acts absolutely or for such period of time as shall seem just.

Mode of application.

(2) The application of the Attorney General under subsection (1) may be made without any action being instituted either:

(*a*) by an *ex parte* motion for an interim injunction which shall, if granted, remain in full force for ten days from the date thereof unless the time is extended or the originating motion mentioned in clause (b) is sooner heard and determined; or

(*b*) by an originating notice of motion, which, if an interim injunction has been granted, shall be served within five and returnable within ten days from the date of such interim injunction.

Evidence.

(3) Any information, evidence, exhibit or thing obtained by the Attorney General or his representative or the registrar under the provisions of this Act or the regulations, or copies thereof, certified by the Attorney General or the registrar shall, so far as relevant, be receivable in evidence for all purposes in any action, proceeding or prosecution and, in proceedings under this section only, the evidence of a witness may be used against him notwithstanding anything in the Saskatchewan Evidence Act contained.

Attorney General may order funds, etc to be held.

12. (1) The Attorney General may:

(*a*) when he is about to examine or during or after the examination of any person or company under the provisions of section 9; or

(*b*) when he is about to apply for or has applied for or has obtained an injunction interim or otherwise against any person or company under the provisions of section 11; or

(*c*) where criminal proceedings which in his opinion are connected with or arise out of any security or any trade therein, or out of any business conducted by the accused are about to be or have been instituted against any person,

in writing or by telegram direct any person or company having in Saskatchewan on deposit or under control or for safe keeping any funds or securities of the person or company so to be or actually examined, enjoined or charged, to hold such funds or securities in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the provisions of The Bankruptcy Act, The King's Bench Act, The Winding Up Act of Canada or The Companies Winding Up Act of Saskatchewan or until the Attorney General in writing revokes such direction or consents to release any particular fund or security from such direction, and failure without reasonable excuse by any person or company to comply with any such direction shall constitute an offence, provided that, unless such direction expressly so states, it shall not apply to funds or securities in a stock exchange clearing house nor to securities in process of transfer by a transfer agent and in the case of a bank, loan or trust company the direction shall only apply to the offices, branches or agencies thereof named in the direction.

(2) In any of the circumstances mentioned in clauses (*a*) and (*b*) of subsection (1), the Attorney General may make and file, in the land titles office of any land registration district in which is situated land belonging to any person or company referred to in the said clauses, a certificate that he is about to take or has taken proceedings under the provisions of section 9 or section 11, as the case may be, and such certificate shall, when registered, have the same effect as the registration of a certificate of *lis pendens*.

Application for direction.

(3) Any person or company in receipt of a direction given under subsection (1) if in doubt as to the application of such direction to any funds or security, or in case of a claim being made thereto by any person or company not named in such direction, may apply to the Court of King's Bench or a judge thereof who may direct the disposition of such fund or security and may make such order as to costs as may seem just.

Attorney General may take bankruptcy proceedings etc.

(4) The Attorney General, whenever His Majesty becomes a creditor of any person or company in respect of a debt to the Crown arising from the provisions of sections 6 and 7, may take such proceedings as he shall see fit under The Bankruptcy Act, The King's Bench Act, The Winding Up Act of Canada or The Companies Winding Up Act of Saskatchewan for the appointment of an interim receiver, custodian, trustee, receiver or liquidator as the case may be.

Part III.

GENERAL PROVISIONS

Judge not *persona designata.*

13. (1) A judge of the Court of King's Bench in exercising any of the powers conferred upon such judge by this Act shall be deemed so to act as a judge of such court and not as *persona designata.*

(2) The Attorney General shall in all proceedings under this Act or the regulations be deemed to be acting as the representative of His Majesty in the right of Saskatchewan, and not as *persona designata.*

KING'S BENCH ACT and rules apply.

(3) The provisions of the King's Bench Act and the rules of court made thereunder so far as they are applicable to proceedings of a like nature, including those relating to appeals and to the enforcement of judgments and orders, shall apply to every proceeding before the Court of King's Bench or a judge thereof under the provisions of this Act, save that service of notices and other legal process shall be in accordance with subsection (2) of section 5 and save that costs may be awarded to but not against the Attorney General.

No action, etc., against persons administering Act.

14. No action whatever, and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy shall lie or be instituted against any person whether in his public or private capacity or against any company in respect of any act or omission in connection with the administration or carrying out of the provisions of this Act or the regulations where such person is the Attorney General or his representative, or the registrar or where such person or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of the Court of King's Bench or a judge thereof made under the provisions of this Act.

Regulations.

15. The Lieutenant Governor in Council may make regulations not inconsistent with this Act for the better carrying out of the provisions of this Act, for the more efficient administration thereof and for the prevention of fraud in trading in securities whether upon any stock exchange or elsewhere in Saskatchewan, for the creation of offences, and for any other purpose elsewhere indicated in this Act, and all such regulations and any amendment, alteration or repeal thereof shall become effective in all respects as if enacted in this Act upon the publication thereof in the *Saskatchewan Gazette.*

Penalties.

16. (1) Every person who violates any provision of this Act or the regulations designated as an offence, or who does any fraudulent act not punishable under the provisions of the Criminal Code, shall be liable upon summary conviction to a penalty of not more than $1,000 for a first offence, and not more than $2,000 for a second or subsequent offence, and in case of either a first or a subsequent offence either in default of payment of any penalty imposed, or in addition to such penalty, to imprisonment for a term not exceeding six months.

Companies.

(2) The provisions of subsection (1) shall be deemed to apply *mutatis mutandis,* to any company save that the money penalties may be increased in the discretion of the magistrate to a sum not exceeding $25,000.

(3) No proceedings under this section shall be instituted except with the consent or under the direction of the Attorney General. Consent of the Attorney General required.

(4) Subject to the provisions of subsection (3), any police officer or police constable may, without warrant, arrest any person whom he believes to have committed an offence against this Act, and enter any place, if need be by force, and seize such documents or other things whatsoever as he finds therein. Arrest and seizure without warrant.

17. The Sales of Shares Act is hereby repealed. Rev. Stat. c. 199.

18. This Act shall come into force on a day to be determined by proclamation of the Lieutenant Governor. Coming into force.

EXTRACT FROM STATUTES OF SASKATCHEWAN, 1928-29, CHAPTER 28, ENTITLED "AN ACT RESPECTING COMPANIES"

Prospectus

108. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus. Publication and filing of Prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be filed with the registrar on or before the date of its publication and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated and the copy thereof signed in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding $25 for every day from the date of the issue of the prospectus until a copy is so filed. R.S.S. 1920, c. 76, s. 84.

109. (1) Every prospectus shall state: Contents of prospectus.

(*a*) the contents of the memorandum, with the names, descriptions and addresses of the signatories, and the number of shares subscribed for by them respectively; the number of founders' or management shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company;

(*b*) the number of shares, if any, fixed by the articles as the qualifications of a director, and any provision in the articles as to the remuneration of the directors;

(*c*) the names, descriptions and addresses of the directors or proposed directors;

(*d*) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment of each share; and in the case of a second or subsequent offer of shares, the amount offered for subscrip-

tion on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted;

(e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued;

(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures, to the vendor, and where there is more than one separate vendor, or the company is a subpurchaser, the amount so payable to each vendor:

Provided that, where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors;

(g) the amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for good will;

(h) the amount, if any, paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, and the rate of any such commission:

Provided that it shall not be necessary to state the commission paid to subunderwriters;

(i) the amount or estimated amount of preliminary expenses;

(j) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration of any such payment;

(k) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected:

Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or any contract entered into more than two years before the issue of the prospectus;

(l) the names and addresses of the auditors, if any, of the company;

(m) full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a

director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company;

(*n*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively:

(*o*) the amount intended to be reserved for working capital; and

(*p*) the number of shares, if any, fixed by the articles of the company as the qualification of a director.

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase, of any property to be acquired by the company in any case where:

(*a*) the purchase money is not fully paid at the date of the issue of the prospectus; or

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consderation for the lease, and the expression "subpurchaser" included a sublessee.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to effect him with notice of any contract, document or matter not specially referred to in the prospectus, shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

(6) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that:

(*a*) as regards any matter not disclosed, he was not cognizant thereof; or

(*b*) the non-compliance arose from a honest mistake on his part:

Provided that in the event of non-compliance with the requirements contained in clause (m) of subsection (1) no director or other person shall incur any liability in respect of the non-compliance unless it is proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company either with or without the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under this Act apart from this section. R.S.S. 1920, c. 76, s. 85.

Restriction on alteration of contracts mentioned in prospectus.

110. A company shall not, previously to the statutory meeting, vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting. R.S.S. 1920, c. 76, s. 86.

Liability for statements in prospectus.

111. (1) Where a prospectus invites persons to subscribe for shares in, or debentures of, a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorized the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved:

(*a*) with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and

(*b*) with respect to every untrue statement purporting to be a statement by, or contained in what purports to be, a copy of or extract from a report or valuation of an expert, that it fairly represented the statement or was a correct and fair copy of or extract from the reports or valuation:
Provided that the director, person named as director, promoter, or person who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(*c*) with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document;

or unless it is proved:

(*d*) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(*e*) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith

gave reasonable public notice that it was issued without his knowledge or consent; or

(*f*) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reasons therefor.

(2) Where a prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in the cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section:

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him. R.S.S. 1920, c. 76, s. 87.

EXTRACT FROM STATUTES OF SASKATCHEWAN, 1928-29, CHAPTER 28, ENTITLED "AN ACT RESPECTING COMPANIES".

Prospectus

Publication and filing of Prospectus.

108. (1) Every prospectus issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2) A copy of every such prospectus, signed by every person who is named therein as a director or proposed director of the company, or by his agent authorized in writing, shall be filed with the registrar on or before the date of its publication and no such prospectus shall be issued until a copy thereof has been so filed for registration.

(3) The registrar shall not register any prospectus unless it is dated and the copy thereof signed in manner required by this section.

(4) Every prospectus shall state on the face of it that a copy has been filed for registration as required by this section.

(5) If a prospectus is issued without a copy thereof being so filed, the company, and every person who is knowingly a party to the issue of the prospectus, shall be liable to a fine not exceeding $25 for every day from the date of the issue of the prospectus until a copy is so filed. R.S.S. 1920, c. 76, s. 84.

Contents of prospectus.

109. (1) Every prospectus shall state:

(a) the contents of the memorandum, with the names, descriptions and addresses of the signatories, and the number of shares subscribed for by them respectively; the number of founders' or management shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company;

(b) the number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors;

(c) the names, descriptions and addresses of the directors or proposed directors;

(d) the minimum subscription on which the directors may proceed to allotment, and the amount payable on application and allotment of each share: and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment made within the two preceding years, and the amount actually allotted, and the amount, if any, paid on the shares so allotted;

(e) the number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid-up otherwise than in cash, and in the latter case the extent to which they are so paid-up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued;

(f) the names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares or debentures, to the vendor, and where there is more than one separate vendor, or the company is a subpurchaser, the amount so payable to each vendor;

Provided that, where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors;

(g) the amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for good will;

(h) the amount, if any, paid within the two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, and the rate of any such commission:

Provided that it shall not be necessary to state the commission paid to subunderwriters;

(*i*) the amount or estimated amount of preliminary expenses;

(*j*) the amount paid within the two preceding years or intended to be paid to any promoter, and the consideration of any such payment;

(*k*) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected:

Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or any contract entered into more than two years before the issue of the prospectus;

(*l*) the names and addresses of the auditors, if any, of the company;

(*m*) full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company;

(*n*) where the company is a company having shares of more than one class, the right of voting at meetings of the company conferred by the several classes of shares respectively:

(*o*) the amount intended to be reserved for working capital; and

(*p*) the number of shares, if any, fixed by the articles of the company as the qualification of a director.

(2) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase or for any option of purchase, of any property to be acquired by the company in any case where:

(*a*) the purchase money is not fully paid at the date of the issue of the prospectus; or

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

(3) Where any property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "subpurchaser" included in a sublessee.

(4) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to effect him with notice of any contract, document or matter not specially referred to in the prospectus shall be void.

(5) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary in the advertisement to specify the contents of the memorandum or the signatories thereto, and the number of shares subscribed for by them.

(6) In the event of noncompliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the noncompliance, if he proves that:

(*a*) as regards any matter not disclosed, he was not cognizant thereof; or

(*b*) the noncompliance arose from a honest mistake on his part;

Provided that in the event of non-compliance with the requirements contained in clause (m) of subsection (1) no director or other person shall incur any liability in respect of the noncompliance unless it is proved that he had knowledge of the matters not disclosed.

(7) This section shall not apply to a circular or notice inviting existing members or debenture holders of a company to subscribe either for shares or for debentures of the company either with or without the right to renounce in favour of other persons, but subject as aforesaid, this section shall apply to any prospectus whether issued on or with reference to the formation of a company or subsequently.

(8) The requirements of this section as to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus issued more than one year after the date at which the company is entitled to commence business.

(9) Nothing in this section shall limit or diminish any liability which any person may incur under this Act apart from this section. R.S.S. 1920, c. 76, s. 85.

Restriction on alteration of contracts mentioned in prospectus.

110. A company shall not, previously to the statutory meeting, vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting. R.S.S. 1920, c. 76, s. 86.

Liability for statements in prospectus.

111. (1) Where a prospectus invites persons to subscribe for shares in, or debentures of, a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who has authorized the naming of him and is named in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved:

(*a*) with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures, as the case may be, believe that the statement was true; and

(*b*) with respect to every untrue statement purporting to be a statement by, or contained in what purports to be, a copy of or extract from a report or valuation of an expert, that it fairly represented the statement or was a correct and fair copy of or extract from the reports or valuation:

Provided that the director, person named as director, promoter, or person who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(*c*) with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of, or extract from, a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document:

or unless it is proved:

(*d*) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(*e*) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(*f*) That after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal and of the reasons therefor.

(2) Where a prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(3) Every person who by reason of his being a director or named as a director or as having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section, may recover contribution, as in the cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(4) For the purposes of this section:

The expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement, but does not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company;

The expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him. R.S.S., 1920, c. 76, s. 87.

ALBERTA

STATUTES OF ALBERTA, 1929

Division (4)—Organization and Commencement of Business

29. (1) A public company having a share capital shall not—

(*a*) allot any of its shares; or

(*b*) commence any business; or

(*c*) exercise any borrowing powers; unless—

(i) the company has filed with the Registrar a prospectus complying with this Act, or, if the company does not issue any invitation to the public to subscribe for its shares, a statement in lieu of prospectus, according to Form 4 in the second schedule, naming therein an amount in cash as the minimum subscription upon which the directors may proceed to allotment: Provided that where the company proposes to take over an established business, and does not require or propose to issue any shares or debentures for cash to enable it to carry on that business, the company shall file a statement in lieu of prospectus according to Form 5 in the second schedule, and shall not be required to name therein a minimum subscription; and

(ii) the minimum subscription so named has been subscribed, and the sum payable on application therefor, which shall not be less than five per cent of the nominal amount of each share, or in the case of shares without nominal or par value, five per cent of the consideration for which each such share is being issued, has been paid to and received by the company; and

(iii) the company has filed with the Registrar a statutory declaration as prescribed by section 31; and

(iv) the Registrar has issued under his seal of office a certificate that the company is entitled to commence business.

(2) The minimum subscription so named—

(*a*) shall be the amount which the company shall fix as necessary in order that the company may, with reasonable prospect of success, carry out the plan of operations or conduct the business described in the prospectus or statement in lieu of prospectus; and

(*b*) shall be reckoned exclusively of any amount payable to the company otherwise than in cash; and

(*c*) shall only be expended for the purposes set forth in the statement or prospectus, unless the company by extraordinary resolution sanctions its expenditure for some other purpose authorized by the memorandum of the company.

(3) (*a*) All money paid to and received by the company in respect of the minimum subscription shall be deposited as trust funds to its credit as trustee in a separate account in a branch or agency of a bank in the province, and the com-

pany shall hold and shall declare in its prospectus or statement in lieu of prospectus that it will hold all such moneys in trust to be repaid, if the minimum subscription is not subscribed, in accordance with this section.

(*b*) If any such money is not so deposited and held, the directors of the company shall be jointly and severally liable to repay the money with interest at the rate of six per cent per aunum from the date when it was paid to the company by the subscriber:

Provided that a director shall not be liable if he proves that the failure so to deposit and hold the money was not due to any misconduct or negligence on his part.

(4) (*a*) In the case of a company which has filed a prospectus, if the minimum subscription has not been subscribed at the expiration of ninety days after the first issue of the prospectus, all money paid to and received by the company in respect of the minimum subscription shall be forthwith repaid to the subscribers without any deduction, but without interest; and if such money is not so repaid within one hundred and twenty days after the first issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent per annum from the expiration of the ninetieth day:

Provided that a director shall not be liable if he proves that the failure so to repay the money was not due to any misconduct or negligence on his part.

(*b*) In the case of a company which has filed a statement in lieu of prospectus, the periods of ninety and one hundred and twenty days shall commence respectively from the date on which the statement is filed with the Registrar.

(*c*) A judge of the Supreme Court may upon application either before or after the expiration of any such period, extend the same for such further period as may appear to him to be desirable.

(5) Nothing in this section shall prevent the simultaneous offer for subscription or allotment of shares and debentures, or the receipt of any money payable on application for debentures.

(6) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(7) Any condition requiring or binding an applicant for shares or debentures to waive compliance with any requirement of this section shall be void.

(8) An allotment made by a company to an applicant in contravention of this section shall be void, and shall be so void notwithstanding that the company is in course of being wound up.

(9) Every company which fails to comply with or contravenes any provision of this section shall be guilty of an offence against this Act.

(10) For the purposes of Forms 4 and 5 in the second schedule, the expression "vendor" shall have the meaning assigned to it by subsections (5) and (6) of section 84.

(11) This section shall not apply to an existing company in respect of any act done or omitted before the coming into force of this Act.

30. (1) A public company not having a share capital shall not—

(*a*) admit any person to membership in the company; or

(*b*) commence any business; or

(*c*) exercise any borrowing powers, unless—

(i) the company has filed with the Registrar a prospectus complying with this Act, or, if the company does not issue any invitation to the public to become members in the company, a statement in lieu of prospectus, according to Form 4 in the second schedule, naming therein an amount in cash as the minimum subscription upon which the company may proceed to admit new members.

Provided that where the company proposes to take over an established business, and does not require or propose to admit any members for a subscription in cash to enable it to carry on that business, the company shall file a statement in lieu of prospectus according to Form 5 in the second schedule, and shall not be required to name therein a minimum subscription; and

(ii) the minimum subscription so named has been subscribed, and the sum payable on application therefor, which shall not be less than five per cent of the amount which each member is required to contribute, has been paid to and received by the company; and

(iii) the company has filed with the Registrar a statutory declaration as prescribed by section 32; and

(iv) the Registrar has issued under his seal of office a certificate that the company is entitled to commence business.

(2) Subsections (2), (3), (4), (6), (9), (10), and (11) of section 29 shall apply to a company to which this section applies.

(3) Any condition requiring or binding an applicant for membership to waive compliance with any requirement of this section shall be void.

(4) An admission to membership by a company in contravention of this section shall be void, and shall be so void notwithstanding that the company is in course of being wound up.

31. (1) When the minimum subscription has been subscribed, the company shall file with the Registrar a statutory declaration by the directors—

(*a*) according to Form 6 in the second schedule, in the case of a company which has filed a statement in lieu of prospectus and has named therein a minimum subscription; or

(*b*) according to Form 7 in the second schedule, in the case of a company which has filed a statement in lieu of prospectus and has not named therein a minimum subscription; or

(*c*) according to Form 8 in the second schedule, in the case of a company which has filed a prospectus;

Provided that where a director was by reason of his absence from the province or for other good reason unable to, and did not, perform his duties as a director in relation to the organization of the company pursuant to this Division, he shall not be required to make such a statutory declaration as aforesaid, but in lieu thereof shall make a statutory declaration stating why he was prevented from so performing his duties as a director.

(2) Upon the filing of such a statutory declaration as is prescribed by this section, the Registrar may issue under his seal of office a certificate that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

32. (1) Every public company shall, within six months from the date at which the company becomes entitled to commence business, hold a general meeting of the company (in this Act called "the statutory meeting").

(2) The directors shall, at least seven days before the day on which the meeting is held, forward to every member of the company, and to every person entitled under this Act to receive it, a report (in this Act called "the statutory report") made up to a date not more than seven days before the date of the notice of the statutory meeting, and shall at the same time cause a copy, certified as by this section required, to be filed with the Registrar.

(3) The statutory report shall be certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and shall state—

(*a*) the total number of shares or debentures allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares or debentures partly paid up, the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(*b*) the total amount of cash received by the company in respect of all the shares and debentures distinguished as aforesaid;

(*c*) an abstract of the receipts of the company, exhibiting under distinctive headings the receipts of the company from shares and debentures and other sources, the payments made thereout, and particulars concerning the balance remaining in hand, and an account or estimate of the preliminary expenses of the company;

(*d*) the full name, addresses, and descriptions of the directors, auditors (if any), managing directors (if any), and secretary of the company; and

(*e*) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(4) The statutory report shall, so far as it relates to the shares and debentures allotted by the company, and to the cash received in respect thereof, and to the receipts and payments of the company, be certified as correct by the auditors (if any) of the company.

(5) The provisions of subsections (3) and (4) relating to the particulars as to shares required to be stated in the statutory report shall not apply to a company not having a share capital; but in lieu thereof the statutory report shall state the number of members admitted, and the consideration for which they were respectively admitted, and the total amount of cash received from them, and the auditors (if any) shall certify accordingly.

(6) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(7) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the statutory report, and to pass any ordinary resolution in relation thereto whether previous notice has been given or not.

(8) The meeting may adjourn from time to time, and an adjourned meeting shall have the same powers as an original meeting.

(9) Every company which makes default in complying with the requirements of this section shall be guilty of an offence against this Act.

(10) If default is made in filing such report as aforesaid or in holding the statutory meeting, then at the expiration of fourteen days after the last day on which the meeting ought to have been held any shareholder may petition the Court for the winding-up of the company; and upon the hearing of the petition the Court may either direct that the company be wound up or give directions for the report to be filed, or for a meeting to be held, or to make such other order as may be just; and may order that the costs of the petition be paid by any persons who in the opinion of the Court are responsible for the default.

33. A company shall not previous to the statutory meeting vary the terms of a contract referred to in the prospectus, or statement in lieu of prospectus, except subject to the approval of the statutory meeting.

34. (1) No shares or debentures of a public company allotted or issued or agreed to be allotted or issued to any person for property, services, or any consideration other than cash, shall be transferred, sold, or in anywise dealt with or disposed of before the statutory meeting of the company is held pursuant to this Act, and no certificate of any such share or debenture shall be issued or delivered by the company until that meeting is held.

(2) A transfer, sale, or other dealing in or disposition of shares or debentures contrary to this section shall be void.

(3) Every company and person who contravenes this section shall be guilty of an offence against this Act, and the directors of the company shall be liable to compensate the company and any person injured for any loss, damage, or costs which the company or such person may have sustained or incurred by a contravention of this section:

Provided that—

(*a*) a director shall not be liable if he proves that the contravention was not due to any misconduct or negligence on his part; and

(*b*) proceedings to recover any such loss, damage, or costs shall not be commenced after the expiration of two years from the date of the contravention.

DIVISION (3)—FINANCIAL AND BORROWING PROSPECTUSES

83. (1) Every prospectus issued by or on behalf of a company shall—

(*a*) be dated, and a copy thereof shall be filed with the Registrar on or before that date, which shall, unless the contrary be proved, be taken as the date of the issue of the prospectus; and

(*b*) state on its face that a copy has been filed with the Registrar—

and the copy filed with the Registrar shall be signed by every person who is a director or proposed director of the company on the date of publication or by his agent authorized in writing.

(2) The Registrar shall not file any prospectus unless it is dated and signed in manner required by subsection (1).

(3) Every company and person who makes default in complying with or contravenes any requirement of this section shall be guilty of an offence against this Act.

(4) This section shall apply to a prospectus issued in relation to an intended company, or by or on behalf of any person who is or has been engaged or interested in the formation or promotion of the company, or, prior to the date of the statutory meeting, in the organization of a company.

84. (1) In the case of a company having a share capital every prospectus to which section 83 applies shall state—

(a) the date of incorporation of the company; the address of its registered office; the extent of the liability of members of the company; and the contents of its memorandum and articles as to the amount of the authorized capital and the shares or classes of shares into which it is divided, and as to the amount or rate of commission, or, in the case of debentures, of discount, which the company is authorized to pay or allow, under this Act, and the amounts of capital subscribed and paid up respectively, and the amount (if any) due from the company in respect of mortgages;

(*b*) particulars of the plan of operations of the business which the company proposes to carry on by means of the proceeds of the subscription invited by the prospectus, and the place where the operations or business will be carried on;

(*c*) the number of shares or the amount of debentures offered by the prospectus, and the amount payable on the application for and the allotment of each share or debenture, and the amount or rate of any commission or discount to be paid or allowed thereon;

(*d*) the amount fixed as the minimum subscription on which the directors may proceed to allotment, with an itemized account

showing how that amount is estimated or calculated, and in particular the items for preliminary expenses, and the amount or estimated amount paid or payable for services rendered or to be rendered in relation to the formation or organization of the company, or as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares offered by the prospectus, or allowed or to be allowed as discount in respect of any debentures, offered by the prospectus;

(*e*) particulars of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the subscription invited by the prospectus, or has been within the last two preceding years or is to be paid for by shares or debentures, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the title or interest therein acquired or to be acquired by the company;

(*f*) the name and address of every vendor of property under clause (*e*) and, in the case of a promoter, the amount paid by him in cash, shares, or debentures for the property within the last two preceding years, and the amount (specifying separately the amount (if any) for goodwill) paid or payable in cash, shares or debentures to him for the property. Where there is more than one separate vendor, or the company is a sub-purchaser, particulars as to each vendor shall be stated;

Provided that where the vendors or any of them are a firm the members of the firm shall not be treated as separate vendors;

(*g*) where debentures are offered for subscription, particulars of the security which has been or will be created for those debentures, specifying the property (if any) comprised in the security and the nature of the title to the property;

(*h*) particulars of any services rendered or to be rendered to the company which are to be paid by the company wholly or partly out of the proceeds of the subscription invited by the prospectus, or have been within the last two preceding years, or are to be paid for by shares or debentures;

(*i*) the amount paid within the last two preceding years or intended to be paid to any promoter, with his name and address, and the consideration for any such payment, and the amount in cash subscribed by him for shares or debentures of the company or otherwise contributed by him to the company;

(*j*) particulars showing—

(i) the number of founders' or management or deferred shares (if any), and the nature and extent of the interest of the holders in the property and profits of the company;

(ii) the right of voting at meetings of the company, and where the company is a company having shares of more than one class, the rights conferred by the several classes respectively; but this paragraph shall not apply in the case of an offer of debentures only;

(iii) The number of shares (if any) fixed by the articles as the qualification of a director;

(iv) Any provision in the articles as to the remuneration of the directors, and the remuneration paid or payable to any director;

(v) Whether or not a copy of the company's annual balance sheet and the report of the directors and auditors must under the articles be sent to members of the company; this paragraph shall not apply in the case of an offer of debentures only;

(*k*) the full names, descriptions, and addresses of the directors and proposed directors, and the amount in cash subscribed by each of them for shares and debentures of the company or otherwise contributed by each of them to the company;

(*l*) full particulars of the nature and extent of the interest (if any) of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company; but this clause shall not apply in the case of a prospectus issued more than two years after the date on which the company is entitled to commence business, except as to the particulars relating to property proposed to be acquired by the company;

(*m*) The names and addresses of the auditors (if any) of the company;

(*n*) in the case of a second or subsequent offer of shares or debentures, separate particulars of—

(i) the amount offered for subscription on each previous offer made within the last two preceding years, and the amount actually allotted, and the amount (if any) paid on shares so allotted;

(ii) the amount (if any) paid within the last two preceding years, or payable, as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in or debentures of the company, or allowed or to be allowed as discount in respect of any debentures, and the date or amount of any such commission or discount;

(iii) the number and amount of shares and debentures which within the last two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued, and the name and address of any vendor of property forming such consideration, and the amount paid or payable to him as purchase-money in cash, shares, or debentures for the property, specifying the amount (if any) payable for goodwill;

(iv) the amount paid within the last two preceding years or intended to be paid to any promoter, and the consideration for any such payment;

(*o*) when the prospectus is issued more than one year after the date of the incorporation of the company, a copy of its last balance sheet and general information as to the business which has been carried on by the company and as to its property and assets;

(*p*) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected:

Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than two years before the date of issue of the prospectus.

(2) The information required by subsection (1) to be stated in a prospectus shall be contained in a separate part of the prospectus, commencing with the words "Statutory Information" in conspicuous type, and no other matter shall be included in that part of the prospectus;

Provided that the information required by clauses (*b*), (*c*) and (*m*) of subsection (1) and the full names, descriptions and addresses of the directors and proposed directors may be stated in any part of the prospectus.

(3) In the case of a prospectus issued by a company before it has obtained a certificate entitling it to commence business, the prospectus shall include in the "Statutory Information," in conspicuous type, the following statement, namely:—

"This company has not yet obtained a certificate entitling it to commence business, and is not authorized to allot any shares or debentures, unless the minimum subscription stated in the Statutory Information set forth in this prospectus is subscribed, and a certificate to commence business is subsequently issued to the company under The Companies Act, 1929. All money received by the company in respect of the minimum subscription will, in accordance with The Companies Act, 1929, be held in trust by the company, to be repaid if the minimum subscription is not subscribed."

(4) (*a*) The company shall, upon receipt of his application, forthwith furnish every person who subscribes for any shares or debentures of the company offered by the prospectus, with an acknowledgment of his application and a copy of the prospectus.

(*b*) Where any matter not amounting to a prospectus, but which expressly or by implication invites the public to inquire into the plans or prospects of a company, or as to subscriptions for or the purchase of shares or debentures of a company, is printed, published, or advertised by or on behalf of the company, the company shall, upon receipt of his application, forthwith furnish every person who subscribes for or purchases any shares or debentures of the company with an acknowledgment of his application and a statement in writing of such information as is by subsection (1) required to be contained in a prospectus.

(*c*) Where the shares or debentures of a company are being offered to the public for subscription or purchase and no prospectus is issued in relation to such shares or debentures,

and where any person calls at any house, office, or other place and there invites and obtains a subscription or application for any such shares or debentures, he shall forthwith deliver to each person from whom he obtains such subscription or application a statement in writing of such information as is by subsection (1) required to be contained in a prospectus. It shall be the duty of the company, or, where the person so calling is an agent, the duty of his principal, to provide copies of such statement.

(*d*) In the case of any statement required by clause (*b*) or (*c*) of this subsection, sections 83 and 86 shall, mutatis mutandis, apply as if a prospectus had been issued, and where the company has not yet obtained a certificate entitling it to commence business, subsection (3) of this section and sections 29 and 31 shall also apply, mutatis mutandis, as if a prospectus had been issued.

(*e*) This subsection shall apply to every case to which subsection (4) of section 83 applies.

(5) For the purposes of this section, every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(*a*) the purchase-money payable by the vendor is not fully paid at the date of issue of the prospectus; or

(*b*) such purchase-money is to be paid or satisfied wholly or in part out of the proceeds of the subscription invited by the prospectus; or

(*c*) the contract depends for its validity or fulfilment on the result of that invitation.

(6) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase-money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(7) This section shall not apply to a circular or notice inviting existing members or debenture-holders of a company to subscribe either for shares or for debentures of the company, whether with or without the right to renounce in favour of other persons.

(8) In the event of non-compliance with any of the requirements of this section, a director or other person responsible for the prospectus shall not incur any liability by reason of the non-compliance, if he proves that—

(*a*) as regards any matter not disclosed, he was not cognizant thereof; or

(*b*) the non-compliance arose from an honest mistake of fact on his part:

Provided that, in the event of non-compliance with the requirements contained in paragraph (1) of subsection (1) no director or other person shall incur any liability in respect of the non-compliance unless it be proved that he had knowledge of the matters not disclosed.

(9) Subject to subsection (8), every company and person who makes default in complying with any requirement of this section shall be guilty of an offence against this Act.

(10) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in a prospectus or a statement under clause (*b*) of subsection (4) shall be void.

(11) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or this Act apart from this section.

85. (1) In the case of a company not having a share capital, every prospectus to which section 83 applies shall state—

(*a*) the information required by subsection (1) of section 84, except insofar as it refers to shares;

(*b*) the number of persons whom the company invites to become members, or the amount of debentures offered by the prospectus, and the amount payable on the application for and admission to membership or the application for and allotment of each debenture, as the case may be;

(*c*) particulars showing—

(i) if the membership is divided into different classes, the nature and extent of the interest of each class in the property and profits of the company;

(ii) the right of voting at meetings of the company, and where the membership is divided into different classes, the rights conferred by the several classes of membership respectively, but this paragraph shall not apply in the case of an offer of debentures only;

(iii) the qualification (if any) fixed by the articles for a director;

(iv) any provision in the articles as to the remuneration of the directors, and the remuneration paid or payable to any director;

(v) whether or not a copy of the company's annual balance sheet and the reports of the directors and auditors must under the articles be sent to members of the company; but this paragraph shall not apply in the case of an offer of debentures only;

(*d*) in the case of a second or subsequent invitation to the public to become members of the company—

(i) the number of persons invited within the last two preceding years, and the numbers of members actually admitted, and the amount (if any) paid by them for membership;

(ii) the number of members admitted as members within the last two preceding years for a consideration other than cash, and the consideration (specifying separately any amount for goodwill) for which they were so admitted, and the extent to which they are paid up, and the name and address of the vendor of any property forming such consideration.

(2) In the case of a prospectus issued by a company before it has obtained a certificate entitling it to commence business, the prospectus shall include in the "Statutory Information," in conspicuous type the following statement, namely:—

"The company has not yet obtained a certificate entitling it to commence business and is not authorized to admit any members or allot any debentures, unless the minimum subscription stated in the Statutory Information set forth in this prospectus is subscribed, and a certificate to commence business is subsequently issued to the company under The Companies Act, 1929. All money received by the company in respect of the minimum subscription will, in accordance with The Companies Act, 1929, be held in trust by the company, to be repaid if the minimum subscription is not subscribed."

(3) (*a*) The company shall, upon receipt of his application, forthwith furnish every person who applies for any membership invited by or subscribes for any debentures of the company offered by the prospectus with an acknowledgment of his application and a copy of the prospectus.

(*b*) Where any matter not amounting to a prospectus, but which expressly or by implication invites the public to inquire into the plans or prospects of a company, or as to admission to membership in or the purchase of debentures of a company, is printed, published, or advertised by or on behalf of the company, the company shall, upon receipt of his application, forthwith furnish every person who applies for membership or purchases any shares or debentures of the company with an acknowledgment of his application and a statement in writing of such information as is by subsection (1) required to be contained in a prospectus.

(*c*) Where the public is invited to become members of a company or the debentures of a company are being offered to the public for subscription or purchase and no prospectus is issued in relation to such membership or debentures, and where any person calls at any house, office or other place and there invites and obtains an application or subscription for any such membership or debentures, he shall forthwith deliver to each person from whom he obtains such application or subscription a statement in writing of such information as is by subsection (1) required to be contained in a prospectus. It shall be the duty of the company, or, where the person so calling is an agent, the duty of his principal, to provide copies of such statement.

(*d*) In the case of any statement required by clause (*b*) or (*c*) of this subsection, sections 83 and 86 shall, mutatis mutandis, apply as if a prospectus had been issued, and where the company has not yet obtained a certificate entitling it to commence business, subsection (2) of this section and sections 30 and 31 shall also apply, mutatis mutandis, as if a prospectus had been issued.

(*e*) This subsection shall apply to every case to which subsection (4) of section 83 applies.

(4) Subsections (2) and (5) to (11) of section 84 shall apply to a company under this section.

86. (1) Where a prospectus invites persons to subscribe for shares in or debentures of a company or to become members of a company, every person who is a director of the company at the time of the issue of the prospectus, and every person who is with his consent named

in the prospectus as a director or as having agreed to become a director either immediately or after an interval of time, and every promoter of the company, and every person who has authorized the issue of the prospectus, shall be liable to pay compensation to all persons who subscribe for any shares or debentures or apply for membership on the faith of the prospectus for the loss or damage they may have sustained by reason of any untrue statement therein, or in any report of memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(*a*) with respect to every untrue statement not purporting to be made on the authority of an expert, or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares or debentures or admission to membership, as the case may be, believe, that the statement was true; and

(*b*) with respect to every untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an expert, that it fairly represented the statement, or was a correct and fair copy of or extract from the report or valuation:

Provided that the director, person named as director, promoter, or person who authorized the issue of the prospectus, shall be liable to pay compensation as aforesaid if it is proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

(*c*) with respect to every untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of the statement or copy of or extract from the document;

or unless it is proved—

(*d*) that having consented to become a director of the company he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

(*e*) that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was issued without his knowledge or consent; or

(*f*) that after the issue of the prospectus and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and gave reasonable public notice of the withdrawal, and of the reason therefor.

(2) Every person to whom clause (*e*) or (*f*) of subsection (1) applies shall file with the Registrar a copy of any notice of withdrawal or public notice given by him, within seven days from the date of his notice.

(3) Where the prospectus contains the name of a person as a director of the company, or as having agreed to become a director thereof, and he has not consented to become a director, or has withdrawn his consent before the issue of the prospectus, and has not authorized or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus was issued, and any other person who authorized the issue thereof, shall be liable to indemnify the person named as aforesaid against all damages, costs, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus, or in defending himself against any action or legal proceedings brought against him in respect thereof.

(4) Every person who by reason of his being a director or of his being named as a director or of his having agreed to become a director, or of his having authorized the issue of the prospectus, becomes liable to make any payment under this section may recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment, unless the person who has become so liable was, and that other person was not, guilty of fraudulent misrepresentation.

(5) For the purposes of this section—

(*a*) the expression "promoter" means a promoter who was a party to the preparation of the prospectus, or of the portion thereof containing the untrue statement but does not include any person by reason only of his acting in a professional capacity for persons engaged in procuring the formation of the company; and

(*b*) the expression "expert" includes engineer, valuer, accountant, and any other person whose profession gives authority to a statement made by him.

BILL

No. 23 OF 1929

An Act for the Prevention of Fraud in connection with the Sale of Securities

(Assented to March 20, 1929.)

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:—

1. This Act may be cited as "The Security Frauds Prevention Act, 1929."

2. In this Act, unless the context otherwise requires,—

(*a*) "Broker" shall mean every person other than a salesman who engages either for the whole or part of his time directly or through an agent in the business of trading in securities, and includes such officials of a company or partnership which trades in securities as may be designated by the regulations;

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(*b*) "Company" shall include any association, corporation, company or other incorporated organization, whether acting as a trustee or not;

(*c*) "Fraud," "fraudulent" or "fraudulent act," in addition to its ordinary meaning, shall include—

(i) any intentional misrepresentation by word, conduct or in any manner of any material fact either present or past, and any intentional omission to disclose any such fact;

(ii) any promise or representation as to the future which is beyond reasonable expectation and not made in good faith;

(iii) any fictitious or pretended trade in any security;

(iv) the gaining of, or attempt to gain, directly or indirectly, through a trade in any security, a commission, fee or gross profit so large and exorbitant as to be unconscionable and unreasonable;

(v) generally any course of conduct or business which is calculated or put forward with intent to deceive the public or the purchaser of any security as to the nature of any transaction or as to the value of such security;

(vi) the making of any material false statement in any application, information, material or evidence submitted or given to the Attorney General, his representative or the registrar under the provisions of this Act or the regulations; or in any prospectus or return filed with the Provincial Secretary;

(vii) the violation of any provision of this Act or of the regulations relating to the manner in which brokers or salesmen shall trade in securities and anything specifically designated in the regulations as coming within the meaning of this definition;

(viii) any artifice, agreement, device or scheme to obtain money, profit or property by any of the means hereinbefore set forth or otherwise contrary to law;

(*d*) "Person" shall mean an individual, partnership, association, syndicate and any unincorporated organization whether acting as a trustee or not;

(*e*) "Registrar" shall mean the person appointed by the Lieutenant-Governor in Council to act as registrar under the provisions of this Act and the regulations;

(*f*) "Regulations" shall mean the regulations made from time to time by the Lieutenant-Governor in Council under the provisions of this Act;

(*g*) "Salesman" shall mean every person employed, appointed or authorized by any broker or company to trade in securities whether directly or through sub-agents;

(*h*) "Security" shall include, subject to the provisions of subsection (3) of section 3, any document or instrument commonly known as a security, every documentary evidence of indebtedness or evidence representing or secured by some title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company, evidence of membership in an association of heirs or evidence of any option upon a security and anything designated as a security by the regulations;

(*i*) "Trade" or "trading" shall include, subject to the provisions of subsection (3) of section 3, any disposition of, transaction in, or attempt to deal in, sell or dispose of a security or interest in or option upon a security for any valuable consideration, whether the terms of payment be upon margin, instalment or otherwise, and any underwriting of any issue or part of an issue of a security, the obtaining of a subscription to the capital stock of any organization, whether incorporated or not, and any act, advertisement, conduct or negotiation directly or indirectly in furtherance of any of the foregoing or specifically designated as "trade" or "trading" in the regulations;

(*j*) "Trustee" shall mean a person, or a company, as the case may be, executing a trust expressly created by or declared in an instrument in writing other than a will or court order or judgment, where such trust is to carry on any business or to secure the payment or repayment of money.

Part I

REGISTRATION OF BROKERS AND SALESMEN

3. (1) No person shall—

(*a*) trade in any security unless he is registered as a broker or salesman;

(*b*) act as an official of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he or the partnership or company is registered as a broker;

(*c*) act as a salesman of or on behalf of any partnership or company in connection with any trade in any security by the partnership or company, unless he is registered as a salesman—

and unless such registrations have been made in accordance with the provisions of this Act and the regulations; and any violation of this section shall constitute an offence.

(2) With the approval of the Attorney-General, any partnership or company may be registered as a broker, whereupon the partnership or company may trade in securities, and the members and officials of the partnership, and the officials of the company other than branch managers or salesmen of the partnership or company, may act as such without separate registration, and the provisions of this Act, and of the regulations relating to registered persons or companies, shall be deemed to apply to such partnership or company.

(3) Subsections (1) and (2) shall not apply to any person in respect of any of the following classes of trades or securities:

(*a*) a trade in a security taking place at a judicial, executor's, administrator's, guardian's or committee's sale, or at a sale by an authorized trustee or assignee, an interim or official receiver or a custodian under the Bankruptcy Act, a receiver under The Judicature Act, or a liquidator under The Companies Act, 1929;

(*b*) an isolated trade in a specific security by or on behalf of the owner, for the owner's account, where such trade is not made in the course of continued and successive transactions of a like character;

(*c*) a trade where one of the parties is a bank, loan company, trust company or insurance company, or is an official or employee, in the performance of his duties as such, of His Majesty in right of the Dominion or any province or territory of Canada or of any municipal corporation, or public board or commission in Canada or is registered as a broker under the provisions of this Act;

(*d*) a trade by or for the account of a pledgee or mortgagee for the purpose of liquidating a bona fide debt by selling or offering for sale or delivery, in good faith, in the ordinary course of business, a security pledged in good faith as security for such debt;

(*e*) the distribution, issuance or sale by a company exclusively to the holders of its securities of capital stock, bonds or other securities as a stock dividend or other distribution out of earnings or surplus, or in the process of a bona fide reorganization of the company, or of additional capital stock where no commission or other remuneration is paid or given in connection therewith;

(*f*) the exchange by or on account of one company with another company of its own securities in connection with a consolidation, amalgamation or merger of either company;

(*g*) a trade in good faith by an actual prospector of a security issued by him for the purpose of financing a prospecting expedition, or for the purpose of disposing of any of his interest in a mining claim or property staked by or wholly or partly owned by him;

(*h*) securities in which trust funds may lawfully be invested in Alberta;

(*i*) bonds or notes secured by mortgage upon real estate or tangible personal property where the entire mortgage, together with all of the bonds or notes secured thereby, are sold at the one time;

(*j*) negotiable promissory notes or commercial paper maturing not more than a year from the date of issue;

(*k*) securities evidencing indebtedness due under any contract made pursuant to the provisions of any statute of any province of Canada providing for the acquisition of personal property under conditional sales contracts;

(*l*) securities issued by a person or company organized exclusively for the promotion of art, science, charity, religion or other useful object, or for educational, benevolent, fraternal, charitable, or recreational purposes and not for pecuniary profit, where no part of the net earnings thereof enure to the benefit of any security holder;

(*m*) any class of trade or security specifically exempted from the application of subsections (1) and (2) of this section by the regulations.

4. (1) Unless the Attorney-General otherwise directs, the registrar may within ten days after the receipt by him of any applica-

tion for registration cause to be entered in a book kept for such purpose and open to public inspection, hereinafter called "the Register," the name and address for service of such applicant, whereupon such applicant shall be deemed to be registered as a broker or salesman as the case may be.

(2) The registrar may upon the direction of the Attorney General or his representative authorized in writing cause a temporary entry to be made, designated as such, in the register, subject to cancellation at any time upon the order of the Attorney-General.

(3) Registrations shall expire, and may be changed or renewed as the regulations shall provide.

5. (1) Every application under this Act or the regulations shall be made in writing upon the forms provided by the registrar.

(2) Every applicant, whether domiciled in Alberta or not, shall state in every application an address for service in Alberta, and all notices under this Act, or the regulations and all legal process issued by or on behalf of any person or company, shall be sufficiently served for all purposes if posted by registered mail to the applicant at the latest address for service so stated, and in the case of a non-registered company where the officials are registered, to the latest address of the person registered as the senior official of such company in Alberta.

(3) The registrar may from time to time and shall when so directed by the Attorney-General require any further information or material to be submitted by any applicant or any registered person or company within a specified time and may require verification by affidavit or otherwise of any matter then or previously submitted.

6. (1) Every applicant for registration as a broker shall before registration submit a bond by the applicant, or the person or company he represents, as the registrar may require, such bond to be in the sum of $500 and in such form and upon such conditions as the regulations shall prescribe, and shall pay the fee prescribed by the regulations.

(2) The registrar may, and when so directed by the Attorney-General shall, require any applicant or any registered person or company within a specified time to deliver a bond by a surety company approved by the Attorney-General or any other bond in such form and upon such conditions as the regulations shall prescribe, and in such amount as the regulations or the Attorney-General shall require.

(3) The registrar may, and when so directed by the Attorney-General shall, require a new bond of the kind mentioned in subsections (1) or (2) to be filed within a specified time.

7. (1) Any bond mentioned in section 6 shall be forfeit and the sum named therein shall become due and owing by the person or company bound thereby as a debt to His Majesty in right of the Province when there has been filed with the registrar the Attorney-General's certificate that the person or company in respect of whose conduct the bond is conditioned, or any official, employee or salesman of such company has, in connection with a trade in a security been—

(*a*) in the case of the bond mentioned in subsection (1) of section 6—

(i) charged with any criminal offence; or,

(ii) found upon investigation by the Attorney-General or his representative to have committed a fraudulent act; or

(*b*) in the case of the bond mentioned in subsection (2) of section 6—

(i) convicted of a criminal offence; or

(ii) convicted of an offence against any provision of this Act or the regulations; or

(iii) enjoined by the Supreme Court or a judge thereof otherwise than by an interim injunction.

(2) The Attorney-General may assign any bond forfeited under the provisions of subsection (1) or may pay over any moneys required thereunder to any person, or into the Supreme Court in trust for such persons and companies as may become judgment creditors of the person or company bonded, or to any trustee, custodian, interim receiver, receiver or liquidator of such person or company as the case may be, such assignment or payment over to be in accordance with and upon conditions set forth in the regulations or in any special order of the Lieutenant-Governor in Council.

8. (1) The Attorney-General may order that—

(*a*) any application for registration, renewal or change of registration shall or shall not be granted for any reason which he may deem sufficient;

(*b*) the application of any person for registration shall not be granted where it appears that such person proposes to use or is using a trading name other than his own, or that of his partner, where such trading name is apt to lead the public to believe it is that of a business firm of longer established standing in the Province or is calculated to conceal from the public the identity of the applicant, or is for any reason objectionable;

(*c*) any temporary entry in the register shall be made, suspended or cancelled for any reason which he may deem sufficient;

(*d*) the registration of any person or company shall be suspended for any period or cancelled by reason of default in filing a bond when required under the provisions of subsections (2) and (3) of section 6;

(*e*) the registration of any person or company shall be suspended as provided in section 10—

and no order of the Attorney-General shall be subject to review in any way in any court.

(2) The registrar upon receiving any order of the Attorney-General suspending or cancelling any registration shall cause immediate entry thereof to be made in the register, whereupon the suspension or cancellation shall become effective forthwith, but notice thereof and of the refusal of any application shall be sent to the person or company concerned.

(3) Notwithstanding any order of the Attorney-General a further application may be made upon new or other material, or where it is clear that material circumstances have changed.

Part II

INVESTIGATION AND ACTION BY ATTORNEY-GENERAL

9. (1) The Attorney-General, or any person to whom as his representative he may in writing delegate such authority, may examine any person or thing whatsoever at any time in order to ascertain whether any fraudulent act, or any offence against this Act or

the regulations has been, is being, or is about to be committed, and for such purpose shall have the same power to summon and enforce the attendance of witnesses and compel them to give evidence on oath and to produce documents, records and things as is vested in the Supreme Court or a judge thereof for the trial of civil cases, save that no person shall be entitled to claim any privilege in respect of any evidence or document, record or thing, sought to be given or produced, on the ground that he might be incriminated or exposed to a penalty thereby.

(2) The failure without reasonable excuse of any person or company to furnish information required by the registrar under Part I within the time limited, or the failure without reasonable excuse of any person summoned for examination under subsection (1) to appear or his refusal to give evidence, or to answer any questions, or the failure without reasonable excuse or refusal of any person or company to produce anything where the evidence, answer or production would be required in an action shall constitute an offence and shall also be prima facie evidence upon which—

(*a*) the Attorney-General, or his representative, may base an affirmative finding concerning any fraudulent act to which he may deem it relevant; or

(*b*) the Supreme Court, or a judge thereof, may grant an interim or permanent injunction; or

(*c*) a police magistrate may base a conviction for an offence against this Act or the regulations.

(3) Disclosure by any person other than the Attorney-General, his representative or the registrar, without the consent of any one of them, of any information or evidence obtained, or the name of any witness examined or sought to be examined under subsection (1), shall constitute an offence.

10. If the Attorney-General or his representative upon investigation finds that any fraudulent act, or that any offence against this Act or the regulations, has been, is being, or is about to be committed, the Attorney-General—

(*a*) may where a registered broker, company or salesman is in his opinion concerned therein, order that the broker, company or salesman and any other registered broker, company or salesman connected with the same organization, be suspended from registration for any period not exceeding ten days; or

(*b*) may where he considers a suspension for ten days inadequate, or where any unregistered person or company is in his opinion concerned in such fraudulent act or in such offence, proceed under the provisions of section 11, or otherwise under this Act or the regulations; or

(*c*) may give notice of the fraudulent act to the public by advertisement or otherwise or to any individual by letter or otherwise, whenever he deems it advisable.

11. (1) The Supreme Court or any judge thereof, upon the application of the Attorney-General, where it is made to appear upon the material filed or evidence adduced that any fraudulent act, or

any offence against this Act or the regulations has been, is being, or is about to be committed, may by order enjoin—

(*a*) any registered broker, company or salesman or any person or company implicated with any of them in the same matter from trading in any security whatever absolutely or for such period of time as shall seem just, and any such injunction shall ipso facto suspend the registration of any registered person or company named in the order during the same period; or

(*b*) any person or company from trading in any security whatever, or in any specific security, or from committing any specific fraudulent act or series of fraudulent acts absolutely or for such period of time as shall seem just.

(2) The application of the Attorney-General under subsection (1) may be made without any action being instituted either—

(*a*) by an ex parte motion for an interim injunction which shall, if granted, remain in full force for ten days from the date thereof unless the time is extended or the originating motion mentioned in clause (*b*) is sooner heard and determined; or

(*b*) by an originating notice of motion, which, if an interim injunction has been granted, shall be served within five and returnable within ten days from the date of such interim injunction.

(3) Any information, evidence, exhibit or thing obtained by the Attorney-General or his representative or the registrar under the provisions of this Act or the regulations, or copies thereof, certified by the Attorney-General or the registrar shall, so far as relevant, be receivable in evidence for all purposes in any action, proceeding or prosecution and, in proceedings under this section only, the evidence of a witness may be used against him notwithstanding anything in The Alberta Evidence Act contained.

12. (1) The Attorney-General may—

(*a*) when he is about to examine or during or after the examination of any person or company under the provisions of section 9; or

(*b*) when he is about to apply for, or has applied for, or has obtained an injunction interim or otherwise against any person or company under the provisions of section 11; or

(*c*) where criminal proceedings which in his opinion are connected with or arise out of any security or any trade therein, or out of any business conducted by the accused, are about to be or have been instituted against any person—

in writing or by telegram direct any person or company having in Alberta on deposit or under control or for safe keeping any funds or securities of the person or company so to be or actually examined, enjoined or charged, to hold such funds or securities in trust for any interim receiver, custodian, trustee, receiver or liquidator appointed under the provisions of The Bankruptcy Act, The Judicature Act, or The Companies Act, 1929, or until the Attorney-General in writing revokes such direction or consents to release any particular fund or security from such direction, and failure without reasonable excuse by any person or company to comply with any such direction

shall constitute an offence, provided that, unless such direction expressly so states, it shall not apply to funds or securities in a stock exchange clearing house nor to securities in process of transfer by a transfer agent, and in the case of a bank, loan or trust company the direction shall only apply to the offices, branches or agencies thereof named in the direction.

(2) In any of the circumstances mentioned in clauses (*a*) and (*b*) of subsection (1), the Attorney-General may make and file, in the land titles office of any land registration district in which is situated land, belonging to any person or company referred to in the said clauses, a certificate that he is about to take or has taken proceedings under the provisions of section 9 or section 11, as the case may be, and such certificate shall, when registered, have the same effect as the registration of a certificate of lis pendens.

(3) Any person or company in receipt of a direction given under subsection (1) if in doubt as to the application of such direction to any funds or security, or in case of a claim being made thereto by any person or company not named in such direction, may apply to the Supreme Court or a judge thereof, who may direct the disposition of such fund or security and may make such order as to costs as may seem just.

(4) The Attorney-General, whenever His Majesty becomes a creditor of any person or company in respect of a debt to the Crown arising from the provisions of sections 6 and 7, may take such proceedings as he shall see fit under The Bankruptcy Act, The Judicature Act, or The Companies Act, 1929, for the appointment of an interim receiver, custodian, trustee, receiver or liquidator as the case may be.

Part III

GENERAL PROVISIONS

13. (1) A judge of the Supreme Court in exercising any of the powers conferred upon such judge by this Act shall be deemed so to act as a judge of such court and not as persona designata.

(2) The Attorney-General shall in all proceedings under this Act or the regulations be deemed to be acting as the representative of His Majesty in the right of the Province, and not as persona designata.

(3) The provisions of The Judicature Act and the rules of court made thereunder so far as they are applicable to proceedings of a like nature, including those relating to appeals and to the enforcement of judgments and orders, shall apply to every proceeding before the Supreme Court or a judge thereof under the provisions of this Act, save that service of notices and other legal process shall be in accordance with subsection (2) of section 5 and save that costs may be awarded to but not against the Attorney-General.

14. No action whatever, and no proceedings by way of injunction, mandamus, prohibition or other extraordinary remedy shall lie or be instituted against any person whether in his public or private capacity or against any company in respect of any act or omission in connection with the administration or carrying out of

the provisions of this Act or the regulations where such person is the Attorney-General or his representative, or the registrar, or where such person or company was proceeding under the written or verbal direction or consent of any one of them, or under an order of the Supreme Court or a judge thereof made under the provisions of this Act.

15. The Lieutenant-Governor in Council may make regulations not inconsistent with this Act for the better carrying out of the provisions of this Act, for the more efficient administration thereof and for the prevention of fraud in trading in securities whether upon any stock exchange or elsewhere in the Province, for the creation of offences, and for any other purpose elsewhere indicated in this Act, and all such regulations and any amendment, alteration or repeal thereof shall become effective in all respects as if enacted in this Act upon the publication thereof in *The Alberta Gazette*.

16. (1) Every person who violates any provision of this Act or the regulations designated as an offence, or who does any fraudulent act not punishable under the provisions of The Criminal Code, shall be liable upon summary conviction to a penalty of not less than five hundred dollars nor more than one thousand dollars for a first offence, and not less than one thousand dollars nor more than two thousand dollars for a second or subsequent offence, and in case of either a first or a subsequent offence either in default of payment of any penalty imposed, or in addition to such penalty, to imprisonment for a term not exceeding six months.

(2) The provisions of subsection (1) shall be deemed to apply mutatis mutandis, to any company save that the money penalties may be increased in the discretion of the magistrate to a sum not exceeding twenty-five thousand dollars.

(3) No proceedings under this section shall be instituted except with the consent or under the direction of the Attorney-General.

(4) Subject to the provisions of subsection (3), any police officer or police constable may, without warrant, arrest any person whom he believes to have committed an offence against this Act, and enter any place, if need be by force, and seize such documents or other things whatsoever as he finds therein.

17. The Sales of Shares Act is hereby repealed.

18. This Act shall come into force upon a date to be fixed by Proclamation of the Lieutenant-Governor in Council.


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